



## FLASH NEWS

2/17

## NATIONAL DECISIONS OF INTEREST FOR THE UNION

OVERVIEW FROM 13 JULY TO 31 AUGUST 2017



### Portugal – Constitutional Court

#### ***Services of publicly available electronic communications or of public communications networks***

The Constitutional Court ruled on the constitutionality of a provision of the national legislation concerning the obligation of the retention of certain data for a period of one year, which transposed directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks.

It stated that the said provision does not impose any disproportionate restriction on the right to privacy. The fact that the ruling *Digital Rights Ireland* ([C-293/12](#) and [C-594/12](#)) had declared directive 2006/24/EC to be invalid does not automatically result in the invalidity of the national legislative act of transposition.

Tribunal Constitucional, [ruling of 13.07.2017, no. 420/2017 \(PT\)](#)

[Summary \(EN\)](#)



### Czech Republic – Supreme Administrative Court

#### ***Taxation - System for taxation of income of a professional footballer***

The Supreme Administrative Court ruled that, as the Czech law is not clear as regards the nature of the activity of a professional footballer as well as the system for taxation of income associated to it, it is advisable to first take into account the content of his contract. Given that the said footballer was charged VAT and in view of the Union law, it ruled that he exercised a profession in an independent manner, even if some elements of the independence were not evident in this case. It also ruled that, given that the national law provides for several taxation systems relating to the independent status, the footballer can select the most favourable one to the detriment of the tax authorities.

Nejvyšší správní soud, [ruling of 13.07.2017, no. 6 Afs 278/2016-54 \(CZ\)](#)

[Press release \(CZ\)](#)



### Portugal – Supreme court

#### ***Fundamental rights - Right to honour, good name and reputation versus freedom of the press - Balancing of the interests involved***

Hearing an appeal in cassation, the Supreme court ruled that in case of conflict between the fundamental rights to honour, good name and reputation, on the one hand, and the freedom of the press, on the other hand, it is necessary to balance the interests involved. In the context of this balancing, the said Court established a distinction between the restrictions on freedom of expression in the domain of political debate and the permissible restrictions with respect to a private individual. If, in the first case, the journalistic freedom also includes the possible use of a certain level of exaggeration, maybe even provocation, and in the second case, the press should not cross certain limits, especially when the offences are gratuitous, disproportionate or without any relation to the public interest in information.

Supremo Tribunal de Justiça, [ruling of 13.07.2017, no. 1405/07.1TCSNT.LI.SI \(PT\)](#)



### Spain – Supreme court

#### ***Free movement of persons - Limitations of the right to family reunification***

The Supreme court ruled that the conditions to which the Spanish legislation subjects the right to family reunification, resulting from directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, are applicable even when the family reunification sponsor is a Spanish national never having exercised his right to free movement. Thus, for an application of family reunification filed by a Spanish citizen wanting his Cuban partner to join him, the Supreme court came to the conclusion that he is subject to the same restrictions as the citizens of other Member states, and mainly to the obligation of having sufficient resources so as to not become a burden on the social assistance system.

Tribunal Supremo, Sala de lo Contencioso, [ruling of 18.07.2017, no. STS 2966/2017 \(ES\)](#)

[Press release \(ES\)](#)



## **United Kingdom – Supreme court**

### ***Removal of a national of the Union having entered into a marriage of convenience - Burden of proof***

The Supreme court ruled on the burden of proof in a case where a national of the Union having obtained the right of permanent residence in the United Kingdom under article 17 of directive 2004/38, on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, was subjected to an expulsion measure owing to allegedly having entered into a marriage of convenience. According to the Supreme court, it is the responsibility of the Minister for Home Affairs to establish that the main purpose of the planned marriage was to facilitate the immigration for one of the parties and that this purpose was shared by each of them.

Supreme Court, [ruling of 26.07.2017, Sadovska and others. v Secretary of State for the Home Department, no. \[2017\] UKSC 54 \(EN\)](#)



## **United Kingdom – Supreme court**

### ***Legal expenses pertaining to labour law disputes - Increase concerning labour disputes - Incompatibility with the Charter of Fundamental Rights***

Hearing an appeal filed by a trade union against an order of the Lord Chancellor providing for a significant increase in the legal expenses for labour law disputes, the Supreme court highlighted the significance of the constitutional right of access to justice and the value of this access, not only for the parties to the proceedings, but also for the company in general. In this respect, the Supreme court ruled that the measure in question was contrary to national law, insofar as it unjustifiably undermined the right of access to justice. According to the Court, it was also contrary to article 47 of the Charter of Fundamental Rights, as interpreted mainly by the Court of Justice in the ruling *Star Storage and others*. ([C-439/14 et C-488/14](#)).

Supreme Court, [ruling of 26.07.2017, R \(UNISON\) v Lord Chancellor, no. \[2017\] UKSC 51 \(EN\)](#)

[Press release \(EN\)](#)



## **France – Constitutional Council**

### ***CETA - Absence of clause contrary to the Constitution***

The Constitutional Council ruled that the free-trade agreement between the European Union and Canada has no clause that is contrary to the Constitution. The Wise Men examined several aspects of the agreement, while distinguishing what comes under the exclusive competence of the Union, i.e. the essential elements of the said Agreement, competences shared with the Member states.

The Constitutional Council especially studied the mechanism of settling disagreements between investors and States, based on the precautionary principle of which it recalled the constitutional value and, finally, on the provisional application of the agreement and its conditions of termination. The agreement entered into provisional application on 21 September 2017.

Constitutional Council, [decision of 31.07.2017, no. 2017/749 DC \(FR\)](#)

[Press release \(FR\)](#)



## **France – Constitutional Council**

### ***Code of Internal Security - Prevention of terrorism - Right to privacy***

Hearing a priority question of constitutionality, the Constitutional Council declared the second sentence of article L.851-2 of the code of internal security to be contrary to the Constitution. It allowed, in its wording resulting from law no. 2016-987 of 21 July 2016, the administration to be authorised, for the prevention of terrorism, to obtain the collection of real-time login data of persons who are likely to be linked with a threat and persons belonging to their family. As a high number of persons were likely to be subjected to this collection technique without any close connection to the threat, it has been decided that the legislator did not carry out a balanced conciliation between the prevention of violations of public order and offences and the right to privacy.

Constitutional Council, [decision of 04.08.2017, no. 2017-648 QPC \(FR\)](#)

[Press release \(FR\)](#)



## **Czech Republic– Constitutional Court**

### ***Asylum policy - Recognition of decisions in the EU - Refusal to extradite a beneficiary of the right of asylum***

Referring to the common policy on asylum and the principle of non-refoulement, the Constitutional Court stated that an international protection granted in a country of the Union should be recognised by all the Member states and should, therefore, be considered as an obstacle to the extradition of a beneficiary of the right of asylum. The Constitutional Court criticised the competent authorities for having placed a beneficiary of the right of asylum, against whom there has been an extradition procedure in the Czech Republic for the purpose of criminal proceedings in Russia, under temporary detention pending extradition, without having paid the required attention to the international protection that was granted to him in Austria.

Ústavní soud, [ruling of 15.08.2017, no. II. ÚS 1260/17 \(CZ\)](#)

[Press release \(CZ\)](#)