COURT OF JUSTICE OF THE EUROPEAN UNION
RESEARCH AND DOCUMENTATION DIRECTORATE
Translation funded by the Justice programme of the European Union

FLASH NEWS

5/17

NATIONAL DECISIONS OF INTEREST FOR THE UNION

OVERVIEW FROM 1ST TO 30 NOVEMBER 2017

Spain – Supreme court

Social policy - Discrimination based on religion - Difference in treatment between faiths

The Supreme court established the partial nullity of Royal Decree 839/2015, providing for the conditions of inclusion, in the general social security scheme, of ministers of churches belonging to the Federation of Evangelical Religious Entities of Spain. Pursuant to this royal decree, the Protestant pastors could retroactively pay the social security contributions, in order to obtain certain benefits, only for a limited period of time, while the Catholic priests could pay retroactive contributions till the maximum limit stated by the law, i.e. 35 years. The Supreme court ruled that this difference in treatment was contrary to the principle of equality under article 14 of the Spanish Constitution and article 14 of the ECHR.

*Tribunal Supremo, Sala de lo Contencioso-Administrativo, ruling of 13.11.2017, no. STS 3988/2017 **(ES)***

Press release **(ES)**

France – Court of cassation

Judicial cooperation in civil matters - Jurisdiction in matters of divorce - Defendant national of a Member State and residing in a third state

For the first time, the Court of cassation ruled on the enumeration of facts between articles 6 and 7 of regulation no. 2201/2003 (“Brussels II bis”). In this instance, a French national and a Belgian national, married in France, were settled in India with their children. Later, the wife filed for divorce in a French court. In its ruling, the Court of cassation criticised the court of appeal that, by declaring the national courts competent based on the French law, breached article 6 of the Brussels II bis regulation. In fact, it establishes a limitation of the residual jurisdiction of article 7 when, like in this case, the defendant husband, who lives on the territory of a third state, is a national of a Member State. This solution is also valid when none of the criteria presented by articles 3 to 5 of the said regulation establish the competence of a court of a Member State.

*Court of cassation, ruling of 15.11.2017 no. 15-16.265 **(FR)***

United Kingdom– Supreme court

Free movement of persons - Right of residence of the nationals ofthird countries

An Algerian national, mother of two British children, challenged, before the Supreme court, the difference in treatment between, on the one hand, the persons enjoying a right of residence in United Kingdom based on the ruling of the Court of Justice Zambrano (C-34/09) and, on the other hand, the national citizens and those of the Union. In fact, the national regulation had been amended following this ruling to exclude adults mentioned therein from availing certain social benefits. Dismissing the appeal, the Court held that a right of residence based on the Zambrano ruling can be invoked only when there is a risk that the child, who is a citizen of the Union, might be forced to leave the territory of the Union. In this regard, it is the responsibility of the national law to determine the level of financial support that would be required to allow a person enjoying a right of residence based on the Zambrano ruling to reside on the national territory. It must be noted that neither the provisions of the Charter nor those of the TFEU can be invoked to establish a right to social welfare allowances of a higher amount.

*Supreme Court, R (HC) v Secretary of State for Work and Pensions, decision [2017] UKSC 73 of 15.11.2017 **(EN)***

Slovenia – Constitutional Court

Social policy - Relocation of enterprises - Criteria

In a decision concerning the relocation of enterprises pursuant to article 1st, paragraph 1, point b), of directive 2001/23, the Constitutional Court held that the Supreme court had violated the right to equal treatment of applicants, read in the light of the right to judicial protection, guaranteed by the Constitution. In this instance, the Supreme court, called upon to examine the relocation of an enterprise in light of the criterion based on the existence of a relocation of an organised unit of human and material means, held that the relocation of the enterprise in question had not taken place. It had mainly stated that the transfer of clients did not suffice, by itself, to consider that a relocation of an organised unit of means, with the purpose of pursuing an economic activity, had taken place, although 91% of the clients had been transferred to the new enterprise. By mainly highlighting that such an analysis had not been carried out in light of the relevant case-law of the Court of Justice concerning directive 2001/23, the Constitutional Court annulled the ruling of the Supreme court and sent the case back to it.

*Ustavno sodišče, decision of 16.11.2017, no. Up-561/15-18 **(SL)***

Netherlands – Human rights association

Social policy - Discrimination resulting from the ban on wearing the Islamic headscarf with the police uniform

The Human rights association held that the internal rule of the Dutch national police prohibiting a police official from wearing the police uniform, on the grounds that she wore an Islamic headscarf, constituted a prohibited indirect discrimination.

In fact, the means to attain the legitimate objectives sought by the disputed rule were neither appropriate nor required, given that it involved an official in charge of registering filed complaints via a 3D video connection and that she was not in charge of taking the final decision following the said registrations.

College voor de rechten van de mens, decision of 20.11.2017, no. 2017-135 ***(NL)***

Latvia– Supreme court

Public contracts - Period for lodging an appeal

The Supreme court interpreted the provisions of the law on public contracts providing for a period of ten days to question the requirements stated in the specifications. The Supreme court highlighted the significance of determining whether the tenderer knew about the content of these requirements before or after the end of the said period and if it could ensure the effective protection of its rights, mainly, if it had had sufficient time to prepare and file an appeal under satisfactory conditions.

An interpretation of the law involving fully excluding the possibility of exercising such recourse would be contrary to the objective of the directives in the domain of public contracts. Nevertheless, the right to challenge the requirements of the specifications should be exercised within as short a period as possible, so that the exceeding of a period of two months cannot be considered as being reasonable.

Latvijas Republikas Augstākā tiesa, ruling of 24.11.2017, nr. SKA-1162/2017 ***(LV)***

Spain – Supreme court

Judicial cooperation in civil matters - Competence in matters of divorce - Concept of "usual place of residence"

In the context of a dispute pertaining to the divorce of spouses from different nationalities, the Supreme court ruled on the concept of “usual place of residence”, under article 3, paragraph 1, of regulation (EC) no. 2201/2003.

Supporting the case-law of the Court of Justice Mikołajczyk (C-294/15), the Supreme court held that the place where the person establishes the permanent or usual centre of his interests should be understood to be his usual place of residence, taking into account all the relevant data to determine the same. Thus, when the person concerned, owing to his professional or economic activities, has established his usual place of residence on the territory of a certain Member State, the court of the same will have jurisdiction for the dissolution of matrimonial ties.

Tribunal Supremo, Sala de lo Civil, Sección 1ª, ruling of 21.11.2017, no. STS 4113/2017 ***(ES)***