



FLASH NEWS

6/17

NATIONAL DECISIONS OF INTEREST FOR THE UNION

OVERVIEW FROM 1ST TO 31 DECEMBER 2017



Austria – Constitutional Court

Non-discrimination - Marriage between persons of the same sex - Admissibility

The Constitutional Court ruled that the distinction between marriage, only open to different-sex couples, and the registered partnership, only provided for same-sex couples, violated the principle of equality.

In this regard, the Constitutional Court stated that the said partnership has become increasingly closer to marriage, such that today, the two legal institutions have effects that are largely similar. Considering that the distinction between marriage and partnership cannot be maintained without generating discrimination based on sexual orientation, it ordered opening the option of marriage to persons of the same sex, not later than 31 December 2018.

Verfassungsgerichtshof, [ruling of 04.12.2017, G 258-259/2017 \(DE\)](#)

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



Netherlands – Supreme court

Judicial cooperation in civil matters - Regulation no. 44/2001 - Interpretation

The Supreme court ruled that the concept of “*rechtsfeit*” (legal fact), as it appears in the Dutch version of article 6, point 3, of regulation no. 44/2001 (“Brussels I”), should be interpreted broadly. It mainly referred to the English, German and French versions of this provision, respectively containing the concepts of “*facts*”, “*Sachverhalt*” and “*fait*” and the ruling of the Court of Justice in the case *Kostanjevec* ([C-185/15](#)).

Supreme court, [ruling of 08.12.2017, no. 16/05029 \(NL\)](#)



Italy – Constitutional Court

Social policy - Labour relations of constitutional bodies with their own employees

The Constitutional Court ruled that the “*autodichia*”, i.e. the power granted to the two chambers of Parliament, the Constitutional Court and the Presidency of the Republic to decide on their own administrative acts, via internal bodies, according to the ad hoc procedures extends to the labour relations of the constitutional bodies with their own employees, and that this does not infringe on the competence of the judicial power. However, it also ruled that this power does not extend to the disputes that have a bearing on the interests of third-parties, such as those relating to public contracts and the provision of services to the administrations of the constitutional bodies, which cannot be taken from the competence of the courts of general jurisdiction.

Corte costituzionale, [ruling of 26.09.2017, no. 262 \(IT\)](#)

[Press release of 13.12.2017 \(IT\)](#)



Italy – Constitutional Court

Primacy and direct effect - Constitutionality check

The Constitutional Court, in the context of the constitutionality check of a provision of the Italian law on competition ruled, by means of an *obiter dictum*, that if in a domain falling under the scope of the Union law, there is a doubt about the compatibility of a national law with the principles of the Constitution and those of the Charter of Fundamental Rights of the European Union, the national court should first ask a question pertaining to constitutionality to the Constitutional Court, without prejudice to the possibility of then submitting a reference for a preliminary ruling to the Court of Justice.

According to the Constitutional Court, without prejudice to the principles of primacy and direct effect of the Union law, under the assumptions like the one that resulted in the ruling of the Court of Justice M.A.S. and M.B. ([C-42/17](#)), of violation of the rights of the person guaranteed by the Constitution as well as the Charter, an immediate intervention of the Constitutional Court is necessary in order to ensure that the rights mentioned be interpreted in accordance with the national constitutional tradition.

Corte costituzionale, [ruling of 14.12.2017, no. 269 \(IT\)](#)



Estonia – Supreme court

Taxation - VAT - Exemptions

In the context of an administrative procedure between a land improvement association taking the form of a non-profit organisation and the customs and tax administration, the Supreme court ruled that, if the Estonian law puts such an association among non-profit bodies, it nevertheless appears that this classification does not respect the conditions set out by the Union law as regards the exemption from value added tax (“VAT”).

In fact, the Estonian law on VAT does not classify the non-profit associations based on their activities. Now, as the objective of a land development association is, in this case, preserving and improving the value of the immovable assets that their members use for their economic activity, this objective does not satisfy the conditions of exemption set out by directive 2006/112/EC on the common system of value added tax.

Riigikohus, administrative chamber, [decision of 14.12.2017, no. 3-15-1270 \(EE\)](#)



Sweden – Supreme court

Criminal judicial cooperation - Confiscation of products - Domain name

Hearing an appeal concerning the confiscation of a domain name, the Supreme court stated that such a name constitutes a property, under the copyrights law, mainly transposing the framework decision 2005/112/JAI of the Council, likely to be confiscated. In this context, the Supreme court also stated that the domain names can come under the concept of “instruments” appearing in the framework decision and, thus, be considered as such during the examination of a possible violation of the said law.

In this case, the “The Pirate Bay” website had been used for the unauthorised online sharing of works protected by copyrights. A person involved in this activity was suspected of infringing the copyright, which led to the application of the Public prosecutor of the Kingdom to carry out the confiscation in question.

Högsta domstolen, [ruling of 22.12.2017, no. B 2787-16 \(SE\)](#)



Latvia – Constitutional Court

Fundamental rights - Right to an effective remedy - Impossible for the national court to modify the amount of a fine fixed by an administrative decision

The Constitutional Court was referred a matter by the regional administrative court pertaining to the compatibility of a provision of the law on administrative procedure with the Constitution, in the context of an appeal against a decision of the competition authority, by which the latter had established the existence of an anti-competitive agreement and fined several companies. The regional administrative court held that the law on administrative procedure restricted the right to an effective remedy, guaranteed by the Constitution, insofar as some of its provisions granted, in some cases, like the one in this instance, a wide discretionary power to the administration to take decisions and did not allow the national courts to replace, if need be, its evaluation of facts.

The Constitutional Court declared the provision in question to be compatible with the Constitution, considering that the right to an effective remedy does not require that the court, which examines the legality of an administrative decision, be able to systematically substitute its assessment with that of the administration and thus itself define the content of a subsequent administrative decision.

Latvijas Republikas Satversmes tiesa, [decision of 22.12.2017, nr. 2017-08-01 \(LV\)](#)

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



France – Council of State

Public health – Discrimination based on the sexual behaviour of blood donors

The Council of State was referred two illegality proceedings concerning an order of the Minister of Social Affairs and Health setting out the selection criteria of the blood donors. It ruled that, under the determination of the contraindications to blood donation, in order to take, in accordance with the provisions of directive 2002/98/EC, all the precautionary measures seeking to reduce, as much as possible, the risk of transmission of an infectious disease, the said Minister did not take an illegal discriminatory measure by basing his decision not on the sexual orientation but the sexual behaviour of donors.

Council of State, [ruling of 28.12.2017, no. 400580 \(FR\)](#)