



FLASH NEWS

3/18

NATIONAL DECISIONS OF INTEREST FOR THE UNION

OVERVIEW OF MAY AND JUNE 2018



France - Court of Cassation

European arrest warrant - Grounds for non-execution - Brexit

The Court of Cassation dismissed the appeal of a British national who opposed the execution of a European arrest warrant authorising his surrender to the British judicial authorities.

It thus validated the decision of the trial judges, particularly in that they had rejected the plea of the consequences of the withdrawal of the United Kingdom from the Union and had refused to stay proceedings pending the response of the Court of Justice in RO Case (C-327/18), on the ground that the withdrawal procedure is on-going and that they are required to act in view of the provisions currently in force. It follows that the applicant's assertion that the legal consequences of such withdrawal can only be detrimental to him is based on conjecture as to the outcome of the criminal proceedings concerning him and on the outcome of the negotiations between the European Union and the United Kingdom.

Court of Cassation, Criminal Division, [judgment of 02.05.2018, 18-82167 \(FR\)](#)



Portugal – Constitutional Court

Right to effective judicial protection - National regulation denying legal protection to profit-making legal persons

The Constitutional Court ruled on the constitutionality of a provision of the Portuguese law on access to law and courts stipulating that profit-making legal persons do not enjoy the right to legal protection (legal advice and judicial aid).

In the light of the case-law of the European Court of Human Rights and the DEB judgment of the Court of Justice ([C-279/09](#)), the Court held that it is possible that the principle of effective judicial protection may be invoked by legal persons. As a result, the granting of legal protection to legal persons cannot, in principle, be ruled out, since this must be assessed in the light of the specific situation of the legal person concerned.

Tribunal Constitucional, [judgment of 08.05.2018, No. 242/2018 \(PT\)](#)



Ireland – High Court

European arrest warrant - Grounds for non-execution - Brexit - Article 267

The High Court made a preliminary ruling (now C-327/18 PPU) in the first case in a series of eight cases on the consequences of Brexit for the surrender of persons subject to a European arrest warrant between Member States. It questioned its own jurisdiction to make such a ruling in the presence of an identical ruling sent to the Court of Justice by a higher national court in the O'Connor case (C-191/18). Since the person concerned was in detention, which justified an urgent decision on his possible surrender, the High Court concluded that it was not a substitute for the Supreme Court insofar as, under the terms of Article 267 (4), TFEU, cases of this type require an urgent preliminary ruling procedure. In addition, the Supreme Court had not ruled out the possibility of such an urgent ruling in its previous order.

High Court, [judgment of 16.05.2018, \[2018\] IEHC 283 \(EN\)](#)



Germany – Federal Court of Justice

Foodstuffs - Health claim - Advertising for a beer brand

The Federal Court of Justice held that advertising for a beer brand cannot refer to it as “easily digestible” or “healthy”, insofar as it is a prohibited health claim for beverages containing more than 1.2% alcohol by volume in accordance with Regulation (EC) No 1924/2006 on nutrition and health claims made on foods. According to the supreme court, this prohibition applies both to the labelling of the product and to its advertisement. The claim relates to health where it is suggested that the consumption of the product in question does not have the detrimental effect that it could generally have with such a product. In this case, it was not apparent from the advertisement at issue that the claim was directed solely at the taste of the beer.

Bundesgerichtshof, [judgment of 17.05.2018 - I ZR 252/16 \(DE\)](#)

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



Spain – Supreme court

VAT - Principle of fiscal neutrality - Directive 2006/112/EC - Right to deduct

The Supreme Court ruled that Article 95 of the Law 37/1992 on VAT, establishing the limitations of the right to deduct for property used for private or commercial purposes, is not contrary to EU law.

In that regard, it considered that such a provision does not limit ex ante the right to deduct a certain proportion, nor prevent the deduction of VAT where the degree of use of the property in relation to the economic or professional activity is less than 50%. In fact, the 50% limitation imposed by this provision may be contested by the taxpayer who, if he can demonstrate that the degree of use of the property in relation to the activity in question amounts to a percentage lower than this threshold, will be entitled to obtain the corresponding VAT deduction from the Public Treasury.

Tribunal Supremo, Sala de lo Contencioso, [judgment of 21.05.2018, STS no. 1822/2018 \(ES\)](#)



Estonia – Supreme Court

Protection of personal data - Right of access and rectification - Obligation of national financial supervisory authorities to maintain professional secrecy

The Supreme Court had before it a request for access and rectification of personal data recorded by the national financial supervisory authority. It held that in this sector the obligation to maintain professional secrecy restricts the right of access and rectification of personal data. According to the Supreme Court, the principle of confidentiality is necessary in order to ensure effective cross-border cooperation. However, it pointed out that the supervisory authority may take into account the information provided by the data subject and rectify the data on its own initiative.

Riigikohus, Administrative Chamber, [Decision of 22.05.2018, No. 3-15-2079 \(EE\)](#)



United Kingdom – Court of Session

Procedure for removal from the Union - Revocation of a withdrawal notification under Article 50 TEU - Brexit

The Court of Session ruling at first instance rejected the request by Members of the British, Scottish and European Parliaments for a preliminary ruling from the Court of Justice on the question whether a Member State may unilaterally revoke the notification of its intention to withdraw from the Union under Article 50 TEU.

Such a request for a preliminary ruling is hypothetical, insofar as the UK Government has clearly indicated its intention not to reverse the decision to withdraw from the Union. In addition, the principle of parliamentary sovereignty prevents national courts from exercising their jurisdiction in this area.

Court of Session (Outer House), [judgment of 08.06.2018 \[2018\] CSOH 61 \(EN\)](#)



Germany – Federal Constitutional Court

Freedom of association - Prohibition on public servants going on strike - Connection between constitutional law and ECHR

The Federal Constitutional Court ruled that the prohibition on State employees (in this case primary or secondary school teachers) to go on strike is, as a principle of German civil service, in accordance with the German Constitution as well as the rules of public international law and the ECHR, in particular Article 11, on freedom of assembly and association.

Bundesverfassungsgericht, [judgment of 12.06.2018 - 2 BvR 1738/12 and Others \(DE\)](#)

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

PREVIOUS DECISIONS



Sweden – Court of Appeal

Copyright - Internet - Directive 2001/29/EC

The Stockholm Court of Appeal as a specialised court for patents and business ruled that by allowing its customers to access the online services of “The Pirate Bay” and “Svefilm”, the defendant - in this case, an internet service provider had engaged in copyright infringement as an intermediary within the meaning of Directive 2001/29/EC. In fact, the online services in question are used, in principle, exclusively for the unauthorised online sharing of works protected by copyright.

Accordingly, the Court of Appeal prohibited the supplier from contributing to access by its customers to the said services and has instructed it, under pain of a fine, to implement blocking techniques for this purpose. In so doing, the Court of Appeal found that the sanction imposed at first instance was proportionate.

Svea hovrätt, patent-och marknadsöverdomstolen, judgment of 13.02.2017, PMT 11706-15 (SV)

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



Greece – Council of State

Asylum policy - Restriction of movement of asylum seekers - Lack of reasons

The Council of State revoked a regulatory measure of the director of the asylum service restricting the free movement of asylum seekers entering the country, who entered Greek territory after 20 March 2016.

While the United Nations Convention on the status of refugees, the Charter of Fundamental Rights, Directive 2013/33/EU and the Constitution allow host States to adopt all “necessary restrictive measures”, the Council of State revoked the measure in question because the grounds of public policy or migration policy justifying the restrictions in question did not fall within the scope of the decision, as the court cannot exercise its control. The argument that the measure had been taken in execution of the EU-Turkey Joint Declaration of 18 March 2016 was also rejected because that was also not clear from the contested measure.

Symvoulío tis Epikrateias, judgment of 17.04.2018, no. 805/2018 (EL)