



FLASH NEWS

4/18

NATIONAL DECISIONS OF INTEREST FOR THE UNION

OVERVIEW OF JUNE AND JULY 2018



Spain – Constitutional Court

Protection of personal data - Right to oblivion - Scope for digital libraries

The Constitutional Court qualified its case law on the right to oblivion, in particular the “right to digital oblivion” with respect to digital library archives. It pointed out that the temporal nature of information that, over time, is no longer “a topical issue” is decisive in the weighting of the fundamental rights in conflict. In this context, when the information concerned is no longer relevant and its deletion does not affect public persons, the right to oblivion applies in order to prevent access to the information through searches carried out using the names of the persons concerned.

Tribunal Constitucional, [judgment of 04.06.2018, STC 58/2018 \(ES\)](#)



Latvia – Supreme Court

Equality between men and women - Prohibition of discrimination - National rule imposing a period of three months to bring an action in the event of discrimination

The Supreme Court interpreted the provisions of the labour laws establishing time limits for bringing appeals. It notably ruled on an appeal concerning the amount owed to a discriminated worker resulting from a difference in pay with a male colleague performing similar work. The Supreme Court ruled that the prescribed time limit, three months from the time the discrimination was brought to the attention of the person concerned, was in accordance with the principle of legal certainty and proportionality.

Latvijas Republikas Augstākā tiesa, [judgment of 06.06.2018, SKC-79/2018 \(LV\)](#)

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



Ireland – Data Protection Commissioner

Protection of personal data - Violation of the General Data Protection Regulation

Following an investigation initiated in 2016, the Data Protection Commissioner (DPC) concluded that the personal data of millions of users of Yahoo Inc. had been violated. As such, the European subsidiary has been held liable, as the data holder, for piracy by third parties on the account data of European users of Yahoo. In particular, the DPC concluded that Yahoo EMEA Limited failed to monitor data processing operations in violation of both European and Irish law. The company only applied its general policy without ensuring that this policy complies with European standards in this area. The DPC ordered it to adopt compliance measures as soon as possible.

Data Protection Commission, [report of 7 June 2018, \[press release \\(EN\\)\]\(#\)](#)



Spain – Supreme court

Fixed-term work - Teacher recruited for the academic year - Unjustified discrimination against non-public service teachers

The Supreme Court considered that the current difference in treatment, particularly with regard to certain salary conditions (right to paid leave, social security contributions) between a public service teacher and a teacher hired under a fixed-term contract at the start of the academic year and dismissed at the end thereof, only to be re-hired at the start of the next academic year, constituted a violation of the principle of non-discrimination, both in terms of the wording of clause 4 of the framework agreement on fixed-term work appended to Directive 1999/70/EC and the case law of the Court. For this court, no objective reason can justify such a difference, particularly when the tasks carried out by these two categories of workers are identical.

Tribunal Supremo, Sala de lo contencioso, [judgment of 11.06.2018, STS 2101/2018 \(ES\)](#)



France – Constitutional Council

Protection of personal data - Law adapting the internal law to Regulation No 2016/679 (GDPR) - Partial non-compliance

The Constitutional Council declared the law on protection of personal data as partially non-compliant with the Constitution, adapting the internal law to Regulation no. 2016/679 (GDPR). In the context of the processing of personal data in criminal matters, the provision which – reproducing the terms of the Regulation – provides for the implementation of such processing “under the control of the public authority” does not sufficiently define the categories of persons likely to act and the purposes of the processing and is therefore tainted with negative incompetence. Regarding the “self-learning” algorithms, which may revise the rules they apply themselves, they cannot be used as the exclusive basis for an administrative decision without the control and validation of the controller.

Constitutional Council, [decision of 12.06.2018, No. 2018-765 DC \(FR\)](#)



Belgium – Council of State

Protection of the welfare of animals at the time of killing - Islamic sacrificial feast - Ritual slaughtering without stunning

The Council of State quashed two administrative decisions authorising a multifunctional hangar and an industrial hall as temporary establishments for the slaughter of sheep and goats as part of the Islamic sacrificial feast.

Relying in particular on the judgment of the Court of Justice in Case [C-426/16](#), the Council of State considered that to be authorised as a slaughterhouse meeting the requirements of Regulation no. 853/2004, the establishment concerned must not be temporary.

Raad van State, [judgements of 14.06.2018, nos. 241785 and 241786 \(NL\)](#)



Romania – Constitutional Court

Criminal law - Money laundering - Principle of legality of offences and penalties - Self-laundering

As part of the a posteriori constitutional review of the national provisions transposing Directive 2005/60/EC, the Constitutional Court held that the perpetrator of an offence of money laundering, carried out in particular by the acquisition, possession or use of assets derived from criminal activity, cannot be the perpetrator of the main offence that generated these assets. Thus, the Constitutional Court considered that said provisions lacked clarity, precision and predictability with regard to the offender, which contravenes the principle of the rule of law and the principle of legality of offences and penalties, as guaranteed by the Constitution and by Article 7 of the ECHR. It also noted that Directives 2005/60/EC and 2015/849/EU regulated the offence of money laundering in a similar manner in national law, while stating that the scope of those directives is limited to money laundering of significant flow of money that could affect the financial system and could be used for terrorist purposes.

*Curtea Constituțională, [decision of 19 June 2018, No. 418 \(RO\)](#)
[Press release \(RO\)](#)*



Spain – Supreme court

Equality between men and women - Reconciliation between work and family life - Maternity leave

The Supreme Court recognised the right of a father, having the status of judge, to benefit from his wife’s entire maternity leave of 16 weeks for the birth of their child, instead of the 10 weeks provided for by the regulations applicable to magistrates, while the mother is unable to suspend her professional activity to benefit from such leave.

It emphasises that the said regulation prescribing the possibility for a father, having the status of magistrate, to benefit only from part of the mother’s maternity leave, i.e. 10 weeks, in the event that the mother cannot take her maternity leave due to her professional activity, is contrary in particular to EU law.

Tribunal Supremo, Sala de lo Contencioso, [judgment of 28.06.2018, STS 2391/2018 \(ES\)](#)



Hungary – Constitutional court

Approximation of laws - Patent law - Agreement on a Unified Patent Court (AUPC)

On the question of ratification and the entry into force of the Agreement on a Unified Patent Court (AUPC), the Constitutional Court held that the transfer of exclusive jurisdiction over certain civil proceedings to an international institution which is not explicitly provided for by the EU treaties is inconsistent with the Basic Law because it excludes any constitutional review of such actions. While this decision does not formally delay the entry into force of the AUPC, it will probably delay Hungary's participation in the unified patent system or end it entirely.

Alkotmánybíróság, decision of 26.06.2018, X/1514/2017 (HU)



United Kingdom – Supreme Court

Fundamental Rights - Limitation of civil partnerships to same-sex couples

The Supreme Court found that a law reserving the right to enter into a civil partnership only for same-sex couples is incompatible with the right to respect for private and family life and the prohibition of discrimination.

In its decision, the Supreme Court rejected the Government's argument based on the case law of the European Court of Human Rights that a wide margin of appreciation was left to the Contracting States in deciding when a legislative amendment can be made in this respect.

Supreme Court, judgment of 27.06.2018, [2018] UKSC 32 (EN)

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



France – Court of Cassation

Right to effective judicial protection - National of a third country kept in a waiting area and tried in a courtroom next to that area

The Court of Cassation ruled on the legality of a hearing, relating to a case where a national of a third country not authorised to enter the national territory was kept in the waiting area of Roissy airport. This hearing was held in a relocated room, assigned to the Ministry of Justice and also located in the airport area. The Court of Cassation dismissed the appeal, noting in particular that, despite their immediate proximity, the courtroom was not to be considered as being within the waiting area and that its location was prescribed by law, which had been validated by the Constitutional Council. It also considered that, in the absence of a reasonable doubt as to the interpretation of the provisions relating to the exercise of independent and impartial justice provided for in Article 47 of the Charter, there was no need to refer the matter to the Court of Justice.

Court of Cassation, judgment of 11.07.2018, No. 18-10062 (FR)



Germany – Federal Court of Justice

Protection of personal data - Right of access of heirs to a user account of a social network

The Federal Court of Justice ruled that a contract for a user account on a social network may be inherited. In the case at issue, the parents of a teenager had asked Facebook to open access to the user account of their deceased daughter. The Federal Court of Justice considered that the contract was not eminently personal and that the right to access the user's account was not contrary to the law on the protection of personal data, in particular the Regulation no. 2016/679 applicable from 25 May 2018.

Bundesgerichtshof, judgment of 12.07.2018, III ZR 183/17 (DE)

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



Germany – Federal Court of Justice

Brussels I regulation - Request for declaration of the enforceability of a judgment

The Federal Court of Justice had before it a case concerning a request for a declaration of the enforceability of a Polish judgment under the Brussels I Regulation. It refused to grant it insofar as that judgment ordered a German public broadcaster to apologise for what the Polish court stated constitutes a falsification of Polish history and a violation of the personality rights of a former Polish prisoner of concentration camps. It considered that, since such an order would imply for the broadcaster to endorse, as its own opinion, the assessment made by the Polish court, such a declaration would constitute a disproportionate infringement of the freedom of expression of that broadcaster and is therefore manifestly contrary to German public policy.

In this case, the broadcaster had, when announcing a programme, referred to “Polish camps” as camps located on Polish territory.

Bundesgerichtshof, [order of 19.07.2018 - IX ZB 10/18 \(DE\)](#)



Germany – Federal Court of Justice

Copyright - Internet - Right to withdraw information or block Internet access

The Federal Court of Justice ruled that, under the new German Telemedia Act, an internet subscriber is not responsible for copyright infringement by a third party. As a result, the copyright owner does not have a right of termination against a subscriber. However, the owner has the right to withdraw information or even to block Internet access. In accordance with Directives 2001/29/EC and 2004/48/EC, this right may be exercised in wired and wireless Internet access.

*Bundesgerichtshof, [judgment of 26.07.2018, I ZR 64/17 \(DE\)](#)
[Press release \(DE\)](#)*



Bulgaria – Constitutional Court

International agreements - Istanbul Convention - Combating violence against women and domestic violence - Applicability in the national legal system - Inadmissibility

Hearing a matter submitted by 75 deputies of the National Assembly, the Constitutional Court ruled that the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the so-called Convention Istanbul, signed in April 2016 by Bulgaria, did not comply with the Basic Law. According to the Constitutional Court, the Bulgarian Constitution, as well as the national laws as a whole, are established on the basis of a binary definition of the human race, whereas the ratification of the Istanbul Convention would impose on Bulgaria the engagement of procedures ensuring legal recognition of a gender different from the biological gender.

Konstitutsionen sad, [judgment no. 13 of 27.07.2018, no. 65 of 7/08/2018 \(BG\)](#)