



FLASH NEWS

5/18

NATIONAL DECISIONS OF INTEREST FOR THE UNION

OVERVIEW OF AUGUST AND SEPTEMBER 2018



Poland – Supreme Court

Primacy of EU law - Jurisdiction of a national court to officially suspend the application of national provisions that violate EU law

In an order for reference, concerning the monitoring of compliance with EU law of a national regulation providing for the lowering of the retirement age of judges of the highest Polish courts (case pending [C-522/18](#)), the Supreme Court decided to suspend the application of several provisions of this regulation, pending the response of the Court of Justice. As a legal basis for its decision, it indicated the articles of the Code of Civil Procedure providing for the possibility for the civil courts to adopt precautionary measures, read in conjunction with Article 267 (3) TFEU and Article 4 (3), TEU. Although a provision of national law precludes the Supreme Court from adopting such precautionary measures in principle, the Court of Justice found, on the basis of the case law of the Court in the *Factortame* and *Others*, [C-213/89](#), and *Simmenthal*, [C-106/77](#) judgements, that its application should be excluded in this case.

Sąd Najwyższy, [order of 02.08.2018, III UZP 4/18 \(PL\)](#)



Denmark – Supreme Court

Freedom to provide services - Lawyers

The Supreme Court examined Article 133 of the Code of Procedure, according to which the right to plead before the regional court is reserved for lawyers who have cleared a review of pleadings before this court. It held that the said Article does not contain any restrictions disproportionate to its legitimate aim of safeguarding the need of clients to be represented by a qualified lawyer when it applies to lawyers from other Member States who intends to work in Denmark.

Højesteret, [judgment of 10.08.2018, Sag 36/2018 \(DA\)](#)



Denmark – Supreme Court

Taxation - Reimbursement of taxes incompatible with EU law - Limitation period - Principle of effectiveness

The Supreme Court rejected a request for the reimbursement of taxes that had been found to be contrary to the Sixth Directive 77/388/EEC by the judgment of 31 March 1992, *Dansk Denkavit*, [C-200/90](#). It considered that the request for the reimbursement of the taxes collected during the years 1988-1991 was limited, since the limitation had not been suspended under the principle of effectiveness. The request had been made following the judgment of 6 September 2011, *Lady & Kid*, [C-398/09](#), according to which EU law precludes a Member State from refusing the reimbursement of an unlawful tax on the ground that the amounts unduly paid by the taxable person were offset by savings resulting from the concomitant withdrawal of other levies.

Højesteret, [judgment of 13.09.2018, Sag 190/2017 \(DK\)](#)

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



United Kingdom – High Court

Accession and withdrawal of Member States - Brexit - Failure of the electoral commission to fulfil its obligations concerning the conduct of the referendum on retention in the European Union

The High Court ruled that the Electoral Commission had failed in its supervision of the conduct of the referendum on the United Kingdom's retention in the Union, in that it misinterpreted the notion of “expenses relating to the organisation of the referendum”, as provided for in national law.

Said commission had allowed Vote Leave, the official exit campaign, to pay GBP 620,000 (EUR 700,000) to a Canadian online advertising company, AggregateIQ, at the request of a member of a group affiliated to Vote Leave. Owing to this payment, the spending ceiling set by law was exceeded by Vote Leave.

High Court, Queen's Bench Division, Divisional Court, [judgment of 14.09.2018, R \[2018\] EWHC 2414 \(Admin\) \(EN\)](#)



Sweden – Migration Court of Appeal

Border controls, asylum and migration - Establishment of identity

The Migration Court of Appeal ruled that the rules of European Union law do not preclude the application of a new national provision allowing the issuance of a residence permit for secondary studies without the applicant for such permit having to “credibly demonstrate” his identity. In this case, the applicant had appealed against a decision of the Administrative Court refusing him this residence permit on the ground that the new provision was not compatible with EU law and was therefore inapplicable.

According to that Court, it follows from the case law of the Court of Justice that the provisions of regulation no. 2016/399 relating to the conditions of entry and checking of identity at the external borders do not apply where a residence permit is granted to a national of a third country illegally staying in Sweden.

Migrationsöverdomstolen, [judgement of 25.09.2018, MIG 2018:17 \(SE\)](#)

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