



## FLASH NEWS

2/19

# NATIONAL DECISIONS OF INTEREST TO THE UNION

## OVERVIEW FROM DECEMBER 2018 TO MARCH 2019

### **Latvia – Supreme Court**

#### **Competition - Decision authorising a concentration - Right of a competitor to challenge such decision**

In this decision, the Supreme Court upheld the lower court's ruling dismissing the application of a retail player to overturn a Competition Council decision allowing a competitor to lease space in a shopping centre. Firstly, the Supreme Court (deviating in this respect from its previous case law on the right to challenge decisions in the field of mergers) analysed the applicability of the criteria arising from the case law of the Court of Justice concerning the possibility for private persons to bring an action under Article 263 TFEU. It then concluded that the rules of national administrative procedure should be applied, as the case law of the Court of Justice could only be used in the alternative. Consequently, the Supreme Court upheld the lower court's conclusion that the applicant had no right to challenge the administrative decision in question.

*Latvijas Republikas Augstākās tiesas Senāts, [07/12/2018 lēmums lietā nr. SKA-1372/2018 \(LV\)](#).*

### **Poland – Supreme Administrative Court**

#### **Asylum policy - Refugee status - Directive 2013/32/EU**

The Supreme Administrative Court heard a dispute between a foreigner claiming refugee status and the Polish administrative authorities who had refused his request for international protection.

The Supreme Administrative Court overturned the ruling of the Administrative Court refusing to suspend the decision of the administrative authorities. It recalled that, according to Court of Justice judgement C-180/17 (judgement of 26 September 2018, X and Y v. State Secretary of Security and Justice), the protection inherent in the right to an effective remedy must be ensured by granting the applicant for international protection a right to an effective automatic suspensive remedy, before at least one judicial body. It subsequently suspended the execution of the contested administrative decision despite the practice of the Polish courts, which only grant provisional protection at the stage of the procedure for return orders.

Naczelny Sąd Administracyjny, [ruling of 20/12.2018, II OZ 1239/18 \(PL\)](#)

### **Spain – Supreme Court**

#### **Protection of personal data - Right to be forgotten - Search engine providing results with erroneous data**

The Supreme Court ruled on the hypothesis that a search engine provides results containing erroneous or inaccurate information, appearing in a press article and harming a person's image. It stressed that the obligation to protect the right to information must not render meaningless the right to privacy and image, as well as the right to the protection of personal data, when these are seriously affected by the dissemination of information on the Internet. Thus, in such a situation, the person suffering prejudice due to an unjustified breach of their honour, privacy or image may lodge a complaint aimed at deleting the data in question with the search engine provider concerned or the Spanish data protection agency.

*Tribunal Supremo, Sala de lo contencioso, [Ruling of 01/01/2019, STS no. 19/2019 \(ES\)](#)*

### **Germany – Karlsruhe High Court**

#### **European arrest warrant - Real risk of violation of the right to a fair trial**

Petitioned on the question of the surrender of a Latvian national to Poland on the basis of a European arrest warrant issued for the purpose of criminal proceedings, the Karlsruhe High Court held that the person concerned would not face a real risk of violation of the right to a fair trial in Poland, within the meaning of the ruling of 25 July 2018, Minister for Justice and Equality (Deficiencies in the system of justice), C-216/18 PPU.

However, since it had not received any assurance that there would be no disciplinary proceedings against the judges in charge of criminal proceedings against the person concerned, the surrender was conditional on the possibility for German diplomatic staff to visit the person concerned during their trial and, if applicable, during their incarceration.

*OLG Karlsruhe, [ruling of 07/01/2019 – Ausl 301 AR 95/18 \(DE\)](#)*



### Spain – Supreme Court

#### **Protection of personal data - Concept of establishment**

The Supreme Court ruled that Spanish legislation on the protection of personal data was applicable to a company having its principal place of business in Luxembourg and having only a post office box and a bank account in Spain. It thereby favoured a flexible interpretation of the concept of establishment, considering that it is possible to consider that a company having its principal place of business in another Member State has an establishment in Spain insofar as it uses technical means allowing the processing of personal data in Spain, in particular when the company concerned takes decisions concerning the content of files containing personal data.

*Tribunal Supremo, Sala de lo Contencioso-Administrativo, ruling of 05/02/2019, no. STS 487/2019 (ES)*



### Cyprus – Supreme Court

#### **Principle of equal treatment between men and women - Paternity leave - Non-application to fathers who are not married or who have not entered into a civil partnership**

Upon referral by the President of the Republic, the Supreme Court declared a national law aimed at extending the scope of paternity leave, as well as related benefits, to fathers who are not married, or who have not entered into a civil partnership but who are cohabiting with the mother, to be incompatible with the Constitution of Cyprus. According to the Court, such a law would increase public expenditure in violation of the Constitution, whereas no directive based on the principle of equal treatment between persons, nor even the case law of the Court, imposes such an obligation on Member States.

*Ανώτατο Δικαστήριο Κύπρου, opinion of 006/02/2019, Πρόεδρος της Δημοκρατίας και Βουλή των Αντιπροσώπων, no. 02/2018 and 3/2018 (GR)*



### Germany – Federal Constitutional Court

#### **Right to a fair trial - Obligation to grant an application for the reopening of criminal proceedings following an amicable settlement before the ECtHR - Absence**

The Federal Constitutional Court ruled that in the context of an application for the reopening of criminal proceedings, the finding of a violation of a fundamental right by the ECtHR in similar cases cannot exclude the *res judicata* authority of the criminal judgement. Furthermore, the Constitutional Court ruled that an amicable settlement before the ECtHR does not constitute a finding of a violation of a fundamental right within the meaning of the German Code of Criminal Procedure.

*Bundesverfassungsgericht, ruling of 13/02.2019, 2 BvR 2136/17 (DE)*

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



### United Kingdom – High Court of Justice

#### **Withdrawal from the European Union - Brexit - Referral for a preliminary ruling**

The High Court dismissed an action challenging the Union's responsibility for alleged violations of fundamental rights in Kosovo.

Despite the fact that the General Court of the European Union had already declared such an action inadmissible (see, in particular, the ruling of 21 November 2016, *KS v Council and others*, T-418/15 AJ), the High Court nevertheless considered that the Court of Justice alone has jurisdiction to pronounce on the matter. However, the High Court refused to refer the matter to the Court for a preliminary ruling on the grounds, inter alia, that the United Kingdom would no longer be a Member State of the Union when the referral for a preliminary ruling was received by the Court.



## France – Court of cassation

### **European Parliament - Parliamentary assistance allowance - Phantom jobs - Criminal proceedings**

The Court of Cassation dismissed the appeal brought against the judgement of the investigating chamber of the Paris Court of Appeal, by the Rassemblement national (formerly Front national) and an MEP of that political party, charged with breach of trust, complicity in breach of trust and misappropriation, in accordance with the recommendations of the European Anti-Fraud Office. In 2015, the President of the European Parliament informed the Minister of Justice that assistants of MEPs from the Front National actually held phantom positions within the party, and thus their salaries, paid with Parliament's funds, were fraudulently financed for up to 1.5 million euros per year. The applicants invoked the material incompetence of the French courts with regard to the principles of the separation of powers and the autonomy of parliamentary assemblies. The Court of Cassation indicated that the actions resulting from this violation of the status of members of parliament, which fall within the jurisdiction of the courts of the Union, are aimed only at suspending the payment of the parliamentary assistance allowance or at recovering undue payments. This is without prejudice to the initiation of criminal proceedings before the national courts.

Court of cassation, [ruling of 19/02/2019, no. 18-83817\(FR\)](#)



## United Kingdom – High Court of Justice

### **Withdrawal from the European Union - Brexit - European Medicines Agency**

The High Court ruled that Brexit is not a sufficient reason to cancel the lease agreement of the European Medicines Agency (EMA), which requires the Agency to continue to pay its rent until 2039, namely about €460 million, despite the transfer of its headquarters to Amsterdam.

In particular, the High Court held that, even after Brexit, the EMA would have the necessary legal capacity to continue its activity in the United Kingdom and, therefore, it could not be considered that it had become impossible for the EMA to perform the contract, nor that the performance would be radically different from that which had been initially planned by the parties.

High Court, Chancery Division, [ruling of 20/02/2019, Canary Wharf \(BP4\) T1 Ltd and Others v European Medicines Agency \[2019\] EWHC 335 \(Ch\) \(EN\)](#)



## Estonia – Supreme Court

### **Border controls, asylum and immigration - Order to leave the territory and prohibition of entry**

The Supreme Court interpreted the national provisions concerning an order to leave the territory and the prohibition to enter it in the light of Directive 2003/109/EC, in particular the notion of a "real and sufficiently serious threat to public policy or public security". Since a third-country national who is a long-term resident enjoys enhanced protection against expulsion under EU law, the Supreme Court ruled that criminal convictions against him should not automatically force him to leave the territory of Estonia. It also highlighted that the withdrawal of the resident's residence permit was not as serious as the expulsion, and could be ordered in the event of a less serious threat.

Riigikohus, [ruling of 19/02/202019, no. 3-17-1545 \(EE\)](#)

[PRESS RELEASE](#)



## France – Constitutional Council

### **Court proceedings - Anonymisation of court decisions - Law on programming 2018-2022 and judicial reform - Identity data of judges, members of the registry, parties and third parties**

After several appeals on the constitutionality of the 2018-2022 Programming and Justice Reform Act were lodged by French parliamentarians, the Constitutional Council ruled that, in particular, by providing that the identity data of judges and members of the registry contained in court decisions made available to the public by electronic means could not be reused for the purposes of evaluation to analyse, compare or predict their professional practices, the legislator intended to prevent such reuse from allowing, through the processing of personal data, the profiling of legal professionals on the basis of the decisions rendered, which could lead to pressures or strategies for choosing a court likely to alter the functioning of justice. The Constitutional Council considered that, in accordance with the 1789 Declaration of the Rights of Man and the Citizen, these provisions did not make any unjustified distinction between litigants and did not infringe the right to a fair and equitable procedure guaranteeing the balance of the parties' rights. It also held that, by requiring administrative and judicial courts to conceal (if the disclosure may affect the security or privacy of these persons or their entourage) the elements making it possible to identify the natural persons who as parties or third parties are mentioned therein before issuing a copy of a court decision to third parties, the legislator had based itself on sufficiently precise criteria and had thus intended to ensure the protection of persons and respect for privacy. As such, the provisions in question did not violate Article 16 of the 1789 Declaration.

Constitutional Court, [ruling of 201/03/2019, no. 2019-778 DC. Press release \(FR\)](#)