



FLASH NEWS

4/19

NATIONAL DECISIONS OF INTEREST FOR THE UNION

OVERVIEW OF THE MONTH OF APRIL 2019



France – Constitutional Council

Freedom to provide services - Short-term furnished tourist accommodations

The Constitutional Council ruled on the constitutionality of the 6th paragraph of article L. 651-6 of the building and housing code relating to the short-term furnished tourist accommodations, in pursuance of which, the sworn officers of the municipal department of housing were authorised to visit the residential premises in order to verify that the terms of occupation comply with the authorisations of allocation, and to open the doors and visit the premises in the presence of the mayor or a police inspector in case of refusal of the occupant or custodian. The Council ruled that this provision violated the principle of the sanctity of the home, insofar as the visit in question was not authorised beforehand by the ordinary judge. On the other hand, the 2nd paragraph of the same article, allowing the said officers to receive any statement and to have presented by the owners, lessees or other occupants any document establishing the conditions in which the premises are occupied, has been declared compliant with the Constitution.

Constitutional Council, [judgment of 05.04.19, No. 2019-772 OPC \(FR\)](#)



Spain – Supreme court

Protection of personal data - Standard clause in an employment contract - Assignment of the rights to the image

The Supreme court established the validity of a standard clause, included in the employment contracts concluded by a telemarketing company, pursuant to which the employees gave their consent for the use of their image in the context of the execution of their employment contracts. In this case, it referred to contracts whose subject was a telemarketing activity through video calls.

The Supreme court mainly ruled that it is not necessary to obtain the express and individual consent of the employees when, like in this case, the processing of personal data, including the assignment of the rights to the image, is necessary for the purpose of the execution of the employment contract.

*Tribunal Supremo, [ruling of 10.04.2019, no. STS 304/2019 \(ES\)](#)
[Press release \(ES\)](#)*



France – Court of cassation

Procedure - Notification of the judicial and extrajudicial documents - Defendant failing to appear - Conditions of notification

The Court of cassation examined the conditions of notification in the European Union of a judicial document if a party fails to appear.

Thus, it held, that when the transmission pertains to a document instituting the proceedings or an equivalent document and that the defendant does not appear, the French ordinary judge can give a ruling only after being assured either that the document has been notified according to a method prescribed by the law of the requested Member State, or that the document has been transmitted according to one of the methods provided for by regulation no. 1393/2007. In addition, it is necessary that a period of at least six months to have passed from the date of sending of the document that no certificate to have been obtained notwithstanding all the steps taken with respect to the competent entities of the Member State.

Court of cassation, [ruling of 11.04.2019, no. 17-31497 \(FR\)](#)



Germany – Federal Constitutional Court

European Parliamentary elections - Exclusion of persons placed under guardianship or non-responsible persons from the right to vote - Inadmissibility

The Federal Constitutional Court ruled, in the context of interim proceedings, that the persons placed under guardianship as well as the perpetrators of a criminal offence placed in psychiatric hospital for absence of criminal responsibility should not be excluded from the right to vote for the European elections. The grounds for the ruling will be published subsequently.

*Bundesverfassungsgericht, [ruling of 15.04.2019, 2 BvQ 22/19 \(DE\)](#)
[Press release \(DE\)](#)*



Czech rep. – Constitutional Court

Fundamental rights - Freedom to conduct business and freedom of expression - Exclusion of Russian customers - Non-discrimination

The Constitutional Court annulled the decision of the Supreme Administrative Court, which had upheld a penalty imposed on a hotel refusing to host Russian customers who had not expressed their disagreement with the annexation of Crimea. It ruled that the hotel had not discriminated between consumers, because the reason for the differentiation was not illegal, irrational, full of hate or humiliating, and that the refused customers were not “existentially endangered” and had alternatives.

On the other hand, the Constitutional Court established a violation of the freedom to conduct business and the freedom of expression of this hotel.

Ústavní soud, ruling of 17.04.2019, no. II. ÚS 3212/18 (CS)
[Press release \(CS\)](#)



Greece – Court of cassation

Protection of consumers - Loans in Swiss francs - Scope of the directive 93/13/EEC

The Court of cassation ruled, in the case of real estate credit contracts expressed in Swiss francs, that a contractual clause enabling a debtor to repay his loan either in foreign currency or in Euros is part of the clauses called “*naturalia negotii*” of a contract. Insofar as this clause reflects the content of a provision of the Greek civil code (art. 291), it is excluded from the scope of the 93/13/EEC directive, as defined in article 1, § 2 of the latter. As a result, the possible abusive nature of such a clause in view of the said directive is not subject to judicial review. With article 1, § 2 of the directive not having been expressly transposed into Greek law by the 2251/1994 law, the judge however made an interpretation conforming to the directive of the said law.

Areios Pagos, Ass., ruling of 18.04.2019, no. 4/2019 (EL)



Cyprus – Supreme court

European arrest warrant - Concept of “issuing judicial authority” - Public prosecutor of Nuremberg - Inclusion

The Supreme court ruled that the public prosecutor of Nuremberg is an “issuing judicial authority” within the meaning of article 6, paragraph 1, of the framework decision 2002/584/JAI. Examining the case-law of the Court of Justice, mainly the Poltorak (C-452/16), Özçelik (C-453/16) and Kovalkovas (C-477/16) cases, the Supreme court considered being capable of resolving the dispute and dismissed the request for a reference for a preliminary ruling formulated by one of the parties, despite the existence of the pending joined cases OG (C-508/18) and PI (C-82/19) pertaining to the same issue. In the said cases, the Court ruled, after the declaration of this decision of the Supreme court that the public prosecutor's offices of the German Länder are not sufficiently independent from the executive power to be qualified as issuing judicial authorities.

Ανώτατο Δικαστήριο Κύπρου, ruling of 23.04.2019, Reinwald και Γενικός Εισαγγελέας της Δημοκρατίας, no. 42/2019 (EL)



Austria – Supreme court

Lugano Convention II - Jurisdiction in matters relating to tort, delict - Place where the damage occurred in case of purely financial loss

The applicant, residing in Austria, initiated an action for damages before an Austrian court against a lawyer residing in Switzerland, alleging that the latter had been complicit in the fraud committed by a Swiss company with regard to his investors, mainly by the drafting of false audit reports. According to the Supreme court, the loss of the applicant took place at his place of residence, the place from where he had paid, to the said company, the investment amounts that were subsequently embezzled. In accordance with the criteria fixed by the ruling of the Court of 12 September 2018, Löber (C-304/17), concerning the determination of the place of occurrence of the purely financial loss, the Supreme court thus established that the adequate link with Austria and the foreseeability, for the defendant, of being sued before the Austrian courts contributed to conferring jurisdiction to them, pursuant to article 5, point 3, of Lugano Convention II.

Oberster Gerichtshof, order of 29.04.2019, 8Ob30/19y (DE)



Sweden – Supreme court

European citizenship - Request sent to a Member State by a third State seeking to extradite a national of another Member State - Execution of a custodial sentence

In this case, a Bulgarian national, registered in the population register in Sweden and residing here for three years, had been the subject of a request for extradition, filed by the Republic of North Macedonia, for the purpose of the execution of a custodial sentence. The Supreme court applied the criteria stated by the Court of Justice in the ruling of 13 November 2018, Raugevicius ([C-247/17](#)), relating to the certain degree of integration in the society of the State of residence. In this context, the Supreme court examined all the personal circumstances concerning the said Bulgarian national, including his family and professional situation in Sweden, to conclude that, with regard to the Union law, the Swedish law relating to foreigners did not prevent his extradition.

Högsta domstolen, [decision of 29.04.2019, Ö 701-19 \(SV\)](#)