



FLASH NEWS

5/19

NATIONAL DECISIONS OF INTEREST TO THE UNION

OVERVIEW OF MAY AND JUNE 2019

*(A new Flash covering the month of July will be released on October 25)



Denmark – Supreme Court

Social policy - Directive 2000/78 - Incorrect transposition - Limitation period for a compensation claim

The Supreme Court dismissed a compensation claim against the Ministry of Labour for incorrect transposition of Directive 2000/78, since the claim was made after the expiry of the three-year limitation period set out in national legislation. In this regard, it considered that the fact that the national legislation was contrary to Union law did not constitute a specific circumstance which could justify a suspension of the time limit. In addition, it held that the principle of effectiveness does not preclude the application of the three-year limitation period, provided that it is reasonable within the meaning of the *Q-Beef NV* judgment ([C-89/10](#)) and does not deprive the applicant of the opportunity to assert their rights before the national courts.

Højesteret, [judgment of 03/05/2019, Sag BS-23798/2018-HJR \(DK\)](#)



Spain – Constitutional Court

Fundamental rights - Protection of personal data - Political opinions collected by political parties - Lack of constitutional guarantees

Seised for an appeal for unconstitutionality, the Constitutional Court declared null and void the article of the electoral law which allowed political parties to collect personal data concerning the political opinions of citizens in the framework of electoral activities. In accordance with the case law of the Court of Justice, it concluded that there are no clear and precise rules governing the scope and application of the measure in question and that there are no minimum requirements to ensure that persons whose data have been stored have sufficient guarantees to protect their personal data effectively against the risk of abuse and against unlawful access and use.

Constitutional Court, [judgment of 22/05/2019 \(STC 76/2019\), \(ES\)](#)



Belgium – Constitutional court

European arrest warrant - Deferred surrender - Application for provisional release

The Constitutional Court ruled on the constitutionality of a provision preventing persons detained under a European arrest warrant which has become enforceable from requesting their conditional release or on bail, whereas such a possibility is available to persons detained on the basis of a European arrest warrant which has not yet become enforceable and to persons detained under a Belgian investigation.

It held that the absence of this possibility of provisional release is justified and proportionate in the context of a normal release as soon as possible, but that it cannot be accepted when the release is deferred with a view to prosecution in Belgium for an act other than that covered by the European arrest warrant.

Constitutional Court, [judgment of 28/05/2019, no. 90/2019 \(FR\) \(NL\)](#)



Czech Republic - Constitutional Court

Asylum policy - Combination of asylum and extradition procedures - Protection of an asylum seeker

The Constitutional Court has ruled that a foreigner who claims asylum on several occasions and for the same reasons may be extradited provided that the procedure relating to their first asylum application in the Union is closed, which was the case here. That court stated that the content of the right of asylum within the meaning of national law and the Charter of Fundamental Rights of the European Union is not the right to be granted asylum, but the right to examination of a related application. In the context of this case, it noted that the protection of asylum seekers provided by Czech law is more extensive than that provided by Union law.

Ústavní soud, [judgment of 03/06/2019, II. ÚS 3505/18 \(CS\)](#)
[Press release \(CS\)](#)



Slovenia – Supreme Court

Free movement of workers - Study abroad grant - Conditions

The Supreme Court upheld the decision of the Ljubljana Court of Appeal on the non-compliance with Article 45 TFEU of a contractual clause requiring a beneficiary of a state-funded study abroad grant to find work within 30 days of completion of the studies on Slovenian territory. It iterated that said contractual clause is disproportionate, since the objective of finding a job after studies abroad on Slovenian territory can be achieved by a less restrictive measure, namely the fixing of a longer period. Consequently, the Supreme Court found that the clause in question cannot be applied in this case.

Vrhovno sodišče Republike Slovenije, [judgment of 06/06/2019, II Ips 117/2018 \(SL\)](#)



Sweden – Supreme Court

Family law - Surrogate motherhood - Recognition of a foreign judgment

The Swedish Supreme Court recognized a judgment of the Superior Court of the State of California legally recognizing as a mother a Swedish woman who had entered into a legal parenting contract with a United States citizen surrogate mother. Despite the fact that Sweden does not provide for surrogate motherhood and does not recognize foreign judicial decisions adopted in the absence of a legislative basis, the Supreme Court decided to recognize the said judgment in view of the specificities of the case, the best interests of the child and that, in view of recent developments in legislation on assisted reproduction and the more open public view of the subject, such recognition cannot be considered as being contrary to public policy.

Högsta domstolen, [judgment of 13/06/2019, Ö 3462-18 \(SE\)](#)



Sweden – Supreme Administrative Court

Free movement of capital - Life insurance companies - Dividend tax

In a case concerning the definitive levying of tax on dividends ("kuponskatt") paid to a life insurance company without a permanent establishment in Sweden, the Supreme Administrative Court ruled that the Swedish rules on kuponskatt are not compatible with EU law. Unlike the approach of the Court of Justice in its *PMT* judgment ([C-252/14](#)), a case in which the situations in question were not objectively comparable and in which Swedish legislation was compatible with EU law, the Supreme Administrative Court ruled that the situations of resident and non-resident life insurance companies are comparable when the subscribers of such insurance are subject to unlimited pension investment fund tax in Sweden.

Högsta förvaltningsdomstolen, [judgment of 19/06/2019, 5082-18 \(SE\)](#)



Spain – Supreme Court

Transposition of legislation - Concepts of currency and electronic currency - Bitcoin

The Supreme Court ruled that Bitcoin cannot be considered as currency nor as electronic currency within the meaning of the Electronic Currency Act transposing Directive 2009/110, but simply as an intangible patrimonial asset. This finding was made in the context of criminal proceedings which led to the conviction for fraud of a person who had concluded Bitcoin management contracts with private individuals. Following this conviction, these individuals wanted to have the Bitcoins they should have obtained refunded in exchange for the payments they had made at the time the contract was concluded. However, the Supreme Court considered that Bitcoin was not a currency and therefore the amount of these payments had to be refunded in euros.

Tribunal Supremo, Sala de lo Penal, [judgment of 20/06/2019, no. STS 2109/2019 \(ES\)](#)

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



Estonia – Supreme Court

Right of residence - Same-sex registered partner

The Supreme Court invalidated the Aliens Act in so far as it excluded the issuance of a temporary residence permit to a registered partner of the same sex of an Estonian citizen, violating to the right to private and family life guaranteed by both the Estonian Constitution and the ECHR. Although Union law was not applicable in this case, the Supreme Court held that the right of residence of a same-sex partner of a Union citizen could also be conferred by Union law, referring to Directive 2004/38 and the *Coman* case ([C-673/16](#)).

Riigikohtu üldkoguga, [judgment of 21/06/2019, no. 5-18-5 \(ET\)](#)

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



Estonia – Supreme Court

Judicial cooperation in criminal matters - The taking into account of convictions among Member States

The Supreme Court ruled that, even in the absence of provisions transposing Framework Decision 2008/675/JHA on the taking into account of convictions in the Member States of the Union in the course of new criminal proceedings, when applying national law national courts are obliged to interpret it in the light of the objective of such Framework Decision. In this case, the Estonian lower courts should have taken into account the conviction decision of the Latvian court, as this decision was sent to them pursuant to a European Investigation Order, although this decision was not inserted in the Estonian criminal record on the basis of Framework Decision 2009/315/JHA.

Riigikohtu üldkoguga, [judgment of 21/06/2019, no. 1-17-10162 \(ET\)](#)

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