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FLASH NEWS

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NATIONAL DECISIONS OF INTEREST TO THE EU

OVERVIEW OF THE MONTHS FROM NOVEMBER 2019 TO JANUARY 2020

Spain – Supreme Court

Equal treatment - Age discrimination - Court-appointed lawyers assigned to defend persons receiving legal aid

The Supreme Court considered a provision, approved by the Madrid Bar Association, prohibiting lawyers over 75 years of age from being included in the list of lawyers available to defend persons receiving legal aid. In the light, in particular, of Article 21(1) of the Charter and the case law of the Court in relation to Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, the Supreme Court held that the Madrid Bar Association had not established to the requisite legal standard the reasons justifying such a measure or the purpose pursued by it. It thus concluded that such a limitation on grounds of age was discriminatory and therefore annulled the provision in question.

Tribunal Supremo, Sala de lo Civil, judgment of 27/11/2019, no. STS 3799/2019 ***(ES)***

Press release (ES)

Croatia – Constitutional Court

Reference for a preliminary ruling - Failure to refer to the Court - Lack of statement of reasons

In the context of a constitutional complaint, the Constitutional Court annulled a decision of the Supreme Court, as a court whose decisions are not subject to judicial review, because of the non-application of the Cilfit jurisprudence (283/81) in the area of freedom of establishment. The dispute concerned restrictions on the establishment of a law firm in Croatia, as a Member State other than that in which the professional qualification was obtained.

The Constitutional Court, after recalling the criteria laid down in the Cilfit jurisprudence, in accordance with its consistent practice, concluded that the Supreme Court, since it had not set out the reasons for its failure to refer the matter to the Court, despite the request to do so by one of the parties, had violated the latter's right to a fair trial.

Ustavni sud, decision of 03/12/19, U-III-2089/2017 ***(HR)***

Austria – Constitutional Court

Protection of personal data - Protection of privacy - National regulations requiring covert surveillance

The Constitutional Court annulled several provisions of a law adopted in 2018 as part of a "security package", finding that they violated the right to protection of personal data and privacy. The provisions concerned mainly allowed for the hidden recording and storage of data enabling the identification of vehicles and drivers travelling in Austria, the secret monitoring of encrypted messages through the installation of a so-called "Federal Trojan Horse" computer program and, in order to set up this monitoring programme, permission to enter premises, inspect containers and overcome obstacles such as computer or technical security measures that might be encountered.

Verfassungsgerichtshof, judgment of 11/12/2019, G 72-74/2019 et al. ***(DE)***

Press release (DE)

Sweden – Supreme Court

Criminal law - Financing of terrorism - Armed conflicts

The Supreme Court upheld the appeal court's decision to sentence a person to six months' imprisonment for violation of Sweden's "recruitment law", aimed at combating terrorism. In this case, the person concerned had incited the public to transfer money via Facebook to the Islamic State and al-Nusra Front groups.

The central issue was that of a possible limitation of the criminal responsibility of the person concerned, in particular under international humanitarian law, in the event that such groups could be considered as parties to an armed conflict and the alleged acts could be considered as acts of violence not directed against civilians. However, the Supreme Court ruled that the limitation of the criminal responsibility of the person concerned did not apply in this case.

Högsta domstolen, judgment of 13/11/2019, no. B 5948-17 ***(SV)***

Poland – Supreme Administrative Court

Access to justice - Independence of judges

The Supreme Administrative Court rejected an application for the disqualification of a judge appointed by the National Council of the Judiciary, a body considered by the Supreme Court to be non-impartial. The high court stressed the importance of assessing the impartiality of judges on a case-by-case basis in order to avoid any automaticity of decisions and to examine the case independently of personal or external circumstances. In the present case, the Supreme Administrative Court considered that the case in question exceeded its competence, since the request for disqualification did not call into question the individual profile of the judge or his or her impartiality, but the appointment of the judge in a specific procedure. It held that the judgment in Case C-585/18 (Independence of the Disciplinary Chamber of the Supreme Court) could not be invoked in the present case, since it applies to judges of the Disciplinary Chamber of the Supreme Court and not to administrative judges.

Naczelny Sąd Administracyjny, order of 27 January 2020, I OSK 1917/18 ***(PL)***

Netherlands – Supreme Court

Responsibility of the State - Request for an injunction to act - Reduction of greenhouse gas emissions by 2020

The Supreme Court dismissed the Dutch State's appeal in cassation against the judgment of the Court of Appeal in The Hague, which had dismissed the Dutch State's appeal against the injunction at first instance to reduce greenhouse gas emissions by 25% compared with 1990 levels by 2020.

It based its reasoning on the United Nations Framework Convention on Climate Change and, in particular, on Articles 2 and 8 of the ECHR (protection of life and respect for private and family life).

Hoge Raad, judgment of 20/12/2019, no. 19/00135 ***(NL)***

Press release **(NL/EN)**