



FLASH NEWS

2/20

NATIONAL DECISIONS OF INTEREST TO THE EU

OVERVIEW OF THE MONTHS OF FEBRUARY AND MARCH



Poland – Supreme Administrative Court

Access to justice - Independence of judges - Judicial reform in Poland

In six cases concerning the provision of public information, the Supreme Administrative Court rejected applications for the disqualification of a judge appointed by the President of the Republic on the initiative of the National Council of the Judiciary, a body considered by the Supreme Court to be non-impartial.

The high administrative court held that the impartiality of a judge must be assessed on a case-by-case basis, irrespective of the appointment procedure, even if the validity of the appointment could be challenged in the future. In assessing a judge's impartiality, consideration must be given not only to the judge's personal and professional competence, but also to the personal, economic and professional relationships that affect the judge's tenure.

Naczelny Sąd Administracyjny, order of 05/02/2020, I OSK 1394/18, (I OSK 1918/18, I OSK 1969/18, I OSK 1988/18, I OSK 2055/18, I OSK 2142/18) (PL)
[Press release \(PL\)](#)



Czech Republic – Constitutional Court

Management of public finances - Conflict of interests - Lex Babiš

The Constitutional Court dismissed the application for annulment of certain provisions of the law on conflict of interests. The provisions in question prohibited members of the government from owning media outlets and prevented companies more than 25 per cent owned by them from benefiting from public subsidies.

The high court held that, as the law was of general application, the provisions in question partly fulfilled the obligations arising from Regulation 2018/1046 and Directive 2014/24. Consequently, they had to be interpreted in accordance with the principles of Union law (principle of loyal cooperation, sound management of Union budget funds and limitation of distortions of competition).

Ústavní soud, judgment of 11/02/2020, Pl.ÚS 4/17 (CS)



France – Council of State

Public service - Principles of secularism and neutrality - Wearing of an 'imposing' beard by a trainee doctor - Insufficient element to characterise the manifestation of religious beliefs

By its decision of 12 February 2020, the Council of State annulled the decision of the Administrative Court of Appeal of Versailles, which had rejected the application for annulment on the grounds of abuse of authority by the applicant, a trainee doctor of Egyptian origin, whose training agreement had been terminated on the grounds that he refused to trim his 'imposing' beard. In the present case, the director of the hospital had terminated the training agreement on the grounds that the applicant's beard risked 'being perceived by staff and users of the public service as an ostentatious manifestation of a religious affiliation incompatible with the principles of secularism and neutrality of public services'. The Council of State ruled that, on the basis of these elements alone, which in themselves were insufficient to characterise the manifestation of religious beliefs in the context of public services, the Court of Appeal had vitiated its judgment with an error of law.

Conseil d'État, Fifth – Sixth Chambers combined, decision of 12/02/2020, no. 418299 (FR)



Germany – Federal Court of Justice

Medical devices - Defective breast implants - Liability of the notified body

A dispute was brought before the Federal Court of Justice concerning the liability of the notified body, within the meaning of Directive 93/42 concerning medical devices, for damage caused by defective silicone breast implants. The Federal Court of Justice confirmed that, under German law, that body can be held liable in tort on account of its certification activity. It thus applied, in substance, the judgment of 16 February 2017, Schmitt ([C-219/15, EU:C:2017:128](#)), in which the Court held that it is for the Member States to lay down the conditions under which a fault on the part of the notified body may be such as to render it liable to the final recipients of the medical devices.

Bundesgerichtshof, judgment of 27/02/2020, VII ZR 151/18 (DE)
[Press release \(DE\)](#)



Germany – Federal Administrative Court

Environment - Ban on the use of diesel vehicles - Proportionality

An appeal was brought before the German supreme administrative court against the refusal of an authority to prescribe, in the context of an action plan for air quality, a ban on the use of diesel vehicles as part of the measures necessary to comply with the limit values for nitrogen dioxide (NO₂) laid down in Directive 2008/50 on ambient air quality and cleaner air for Europe. It held that such a ban may be disproportionate where it is sufficiently foreseeable that these values will be respected in the near future.

Bundesverwaltungsgericht, judgment of 27/02/2020, 7 C 3.19 (not yet available)

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



Sweden – Supreme Court

Preliminary ruling - Decision under consideration - Office of national judge

The Supreme Court dismissed an application for review of a ruling by the Arbetsdomstolen (Labour Court) following the judgment of 6 April 2017, Unionen ([C-336/15, EU:C:2017:276](#)). In support of his application for revision, the applicant argued that the Arbetsdomstolen's application of the law was manifestly contrary to the Court's ruling, which implied that such application was 'manifestly contrary to the law', a necessary condition under Swedish law for the application for revision to be upheld. The Supreme Court dismissed that argument. In its view, even if the ruling of the Arbetsdomstolen was diametrically opposed to that of the Court, the differing assessment concerned only matters falling within the exclusive jurisdiction of the national courts, namely the facts of the case and the interpretation of the meaning of those facts under national law.

Högsta domstolen, order of 27/02/2020, no. Ö 5731-18 (SV)



France – Court of Cassation

Social policy - the company Uber - Reclassification as an employment contract of the contractual relationship between the said company and driver of a passenger vehicle with driver

In this judgment, the Social Chamber of the Court of Cassation reclassified the contractual relationship between Uber and a driver of a passenger vehicle with driver as an employment contract, confirming the existence of a relationship of subordination between that driver and the company at the time of connection to the Uber digital platform.

In the context of an employment contract, the relationship of subordination is characterised by the performance of work under the authority of an employer who has the power to give orders and directives, to control performance and to sanction the failings of his subordinate. The Court of Cassation noted that a driver on this platform does not build up his own clientele, does not freely set his rates or the conditions under which he provides his service, which are entirely governed by the said company, which has the power to sanction him. Therefore, the driver does not provide his service as a self-employed person but as an employee.

Cour de cassation, judgment of 4/03/2020 no. 19-13.316 (FR)
[Press release \(FR\)](#)



Italy – Court of Cassation

Judicial cooperation in criminal matters - European Arrest Warrant - Subsequent surrender of a detainee

The Court of Cassation ruled that, in the event of the subsequent surrender of a detainee to another Member State of the Union, by the State that made the initial request for surrender, the latter must verify which judicial body in the State that ordered the initial surrender is competent to express consent to the subsequent surrender of the person sought. This body, which does not necessarily have to coincide with the body that authorised the first surrender, must carry out the assessment required by Article 28(3) of Framework Decision 2002/584/JHA.

In the present case, in view of the assent of a public prosecutor's office of the first State, the Court of Cassation considered it necessary to check whether the possibility of activating a subsequent review by way of appeal was envisaged in the legal system concerned.

Cour de cassation, judgment of 5/03/2020, no. 9582 (IT)
[Press release \(IT\)](#)



Spain – Supreme Court

Consumer protection - Dieselgate - Joint and several liability of the manufacturer and seller of a car fitted with manipulated emissions control software

The Supreme Court ruled that the buyer of a car fitted with manipulated emissions control software can seek damages against not only the seller, but also the manufacturer of the vehicle. According to the Supreme Court, the principle of the relative effect of contracts must be interpreted as meaning that there are legally relevant links between the manufacturer of a car and its final buyer. Consequently, the direct seller and the manufacturer are jointly and severally liable for any damage suffered by the buyer. The Supreme Court also clarified that, in the context of such an action, the manufacturer cannot avoid liability by claiming that the engine was manufactured by another company in the group.

Tribunal Supremo, [Sala de lo Civil, judgment of 11/03/2020, no. STS 735/2020 \(ES\)](#)



Netherlands – Court of First Instance of Amsterdam

Judicial cooperation in criminal matters - European Arrest Warrant - Rule of law - Judicial reform in Poland

A request for the execution of a European Arrest Warrant issued by a Polish court was made before the Court of First Instance in Amsterdam. Referring, inter alia, to the decision of the Oberlandesgericht Karlsruhe (Higher Regional Court of Karlsruhe, Germany) of 17 February 2020, also mentioned in this Flash, the Dutch court expressed doubts as to whether the wanted person would, if surrendered to the Polish authorities, be exposed to a risk of violation of his right to a fair trial. In an interlocutory judgment, it therefore invited the parties to take a position on recent developments relating to the rule of law in Poland and on the possible consequences to be drawn from them in the light of the judgment of 25 July 2018, Minister for Justice and Equality (Failures of the judicial system) ([C-216/18 PPU, ECLI:EU:C:2018:586](#)).

Rechtbank Amsterdam, [judgment of 24/03/2020, 13/751021-20 \(NL\)](#)



Estonia – Supreme Court

Structural Funds - Claim for compensation - National standards

The Administrative Chamber of the Supreme Court ruled that, in the case of unlawful refusal of structural aid, the person concerned has the right to compensation for the damage suffered in accordance with national standards. However, the Supreme Court emphasised that compensable damages do not always have to be equal to the amount of the refused aid. Thus, the loss of income (amount of aid) must be reduced by the expenditure saved as a result of the said refusal. According to the high court, Union law does not preclude such compensation for damages.

Riigikohtu halduskolleegium, [judgment of 23/03/2020, no. 3-16-1634 \(ET\)](#)



Germany – Higher Regional Court of Karlsruhe

European Arrest Warrant - Right to a fair trial in the issuing Member State - Judicial reform in Poland

The Higher Regional Court of Karlsruhe lifted an extradition order to secure the surrender of a person subject to a European Arrest Warrant issued in Poland for the purpose of criminal prosecution. It considered that it appeared highly likely that the execution of the warrant would have to be refused, at least in the current state of affairs in Poland, because of the risk of violation of the right to a fair trial.

On the other hand, the German court has not yet ruled on the execution of that mandate, considering it necessary to request additional information, in particular on the independence of Polish judges and the development of judicial reform in Poland.

Oberlandesgericht Karlsruhe, order of 17/02/2020, Ausl 301 AR 156/19 (not yet available)

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

Poland – Supreme Court

Access to justice - Independence of judges - Functioning of the Disciplinary Chamber of the Supreme Court - Judicial reform in Poland

By decision of 20 April 2020, adopted in connection with the Order of 8 April 2020 ([C-791/19 R](#), [ECLI:EU:C:2020:277](#)) (interim measures in the context of an action for failure to fulfil obligations against Poland), the First President of the Supreme Court decided to suspend the functions of the Disciplinary Division of that court by prohibiting the transfer to it or its President of disciplinary cases concerning judges and assigning those cases to the Criminal and Labour Division of that court.

This decision was, however, overturned two weeks later by the new ad interim First President of the Supreme Court, who took office on 1 May 2020. By that decision, the latter, referring to Order C-791/19 R and to the exceeding of his powers by the former First President, thus lifted the suspension of the functions of the Disciplinary Division. With regard to cases not yet entered in the register of the Supreme Court or cases where the formation of the judgment had not yet been determined prior to the suspension, the new ad interim First President ordered abstention from judgment until the delivery of the Court's judgment on the merits of Case C-791/19 R or the delivery of a judgment by the Polish Constitutional Court taking a position on these issues.

Sąd Najwyższy, [decision of the First President of 20/04/2020, 48/2020 \(PL\)](#) and [decision of the ad interim First President of 05/05/2020, 55/2020 \(PL\)](#)

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

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

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