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FLASH NEWS

1/24

NATIONAL DECISIONS OF INTEREST TO THE EU

SEPTEMBER 2023 – APRIL 2024

Poland – Supreme Court

Consumer protection - Unfair terms - Mortgage loan indexed to a foreign currency

The Supreme Court handed down three judgments in which it ruled that the invalidity of the exchange rate provided for in a loan agreement indexed to a foreign currency does not entail the invalidity of the loan agreement in its entirety or the elimination of the principle of indexation to a foreign currency.
In this regard, the high court ruled, on the one hand, that in the absence of an exchange rate in an agreement or in the event that the said rate is null and void, the latter is determined on the basis of the provisions of the Civil Code, which stipulate that a legal act produces not only the effects expressed therein, but also those resulting in particular from the rules of life in society and usage. On the other hand, referring to the decisions of the Polish courts and the judgment in Dziubak (C-260/18), the Supreme Court considered that only the Constitutional Court could repeal the said provisions of the Civil Code or limit their application.

*Sąd Najwyższy, judgments of 19/9/2023, II CSKP 1110/22 (**PL**), II CSKP 1495/22 (**PL**), II CSKP 1627/22 (**PL**)*

Hungary – Supreme Court

Border controls, asylum and immigration - Withdrawal of a settlement permit on security grounds - Obligatory reference for a preliminary ruling

A case was brought before the Supreme Court by a third-country national whose settlement permit had been withdrawn on national security grounds of which he was unaware. This person had asked for the proceedings to be stayed so that the court could refer questions to the Court for a preliminary ruling on the conformity of national legislation with Directive 2003/109/EC and the Charter, and had proposed waiting for the Court to give its ruling in Joined Cases NW (Classified information) (C-420/22 and C-528/22). In this respect, the Supreme Court recalled that a reference to the Court for a preliminary ruling does not entail the suspension of other pending proceedings, unless the national court concerned finds that the applicable provisions of EU law are unclear and that it needs the interpretation of EU law in order to resolve the dispute. Given that Directive 2003/109/EC was not applicable and that the national court was able to consult the content of the classified information in question, effective judicial protection was guaranteed. Consequently, the Supreme Court ruled that a reference for a preliminary ruling was not necessary.

*Kúria, judgment of 3/10/2023, Kfv.VII.37.517/2023/12 (**HU**)*

Germany – Federal Finance Court and Federal Labour Court

Obligation to make a reference for a preliminary ruling - Right to a court of law - Action for annulment of a judgment at last instance

The Federal Finance Court ruled that an action for annulment brought against a final judgment that merely alleges a breach of the obligation to refer provided for in Article 267(3) TFEU is inadmissible.
In this respect, the German high court indicated that, if an applicant proposes a reference to the Court for a preliminary ruling and the court of last instance hearing the case does not act on it, thereby depriving the applicant of the right to a legal judge under the second sentence of Article 101(1) of the Basic Law, the applicant may assert this infringement directly in the context of a constitutional appeal against the decision given by the court of last instance, without first having to bring an action for annulment before the court of last instance.
The Federal Labour Court has also had occasion to rule along these lines.

*Bundesfinanzhof, judgment of 10/10/2023, IX K 1/21 (**DE**)*
*Press release (**DE**)*
Bundesarbeitsgericht, judgment of 21/3/2024, 6 AZR 45/23 (not yet published)
*Press release (**DE**)*

Finland – Supreme Court

Criminal law - Taking into account a conviction handed down in another Member State in the course of new criminal proceedings - Decision not included in the extract from the criminal record

The defendant had submitted to the Court of First Instance and the Court of Appeal a copy of a criminal conviction handed down against him in another Member State and had requested that this decision be taken into account when imposing a new sentence, pursuant to the national legislation implementing Framework Decision 2008/675/JHA.
The Court of First Instance and the Court of Appeal disregarded this decision, considering that it did not appear in the extracts from the criminal record that they had obtained from the Member State concerned.
However, the Supreme Court ruled that, in order to take account of a conviction handed down in another Member State, it was not necessary for it to appear in the criminal record. The defendant had submitted a detailed report on the criminal conviction in question. The courts hearing the case were therefore obliged to verify the information relating to that decision by means of other than requesting an extract from the register of the central authority of the Member State in question.

*Korkein oikeus, judgment of 13/10/2023, ECLI:FI:KKO:2023:74 (**FI**) (**SV**)*

Sweden – Supreme Administrative Court

Taxation - Value added tax (VAT) - Mixed taxable person - Direct effect - Calculation method based on the amount of turnover to determine the deductible proportion in respect of common costs

The Supreme Administrative Court ruled that a mixed taxable person cannot be refused the right to use the calculation method based on the amount of turnover, provided for in Article 174 of Directive 2006/112/EC (VAT Directive), to determine the deductible proportion for common costs. A mixed taxable person is a person who carries out transactions subject to VAT giving him a right to deduct and those not giving him such a right.
Having held that the provisions of Article 173(1) and Article 174 of the VAT Directive had not been correctly transposed into national law, the Swedish high court nevertheless ruled that these provisions should be regarded as having direct effect. In its view, this means that a private individual who so wishes can rely directly on the provisions of those articles to determine the deductible proportion of input VAT in accordance with the calculation method based on the amount of turnover provided for in the VAT Directive.

*Högsta förvaltningsdomstolen, judgment of 16/10/2023, Nos 7254-22 and 7255-22 **(SV)***
*Press release **(SV)***

Hungary – Supreme Court

Protection of personal data - Press article about a figure - Infringement of the right to respect for private life

After hearing an appeal in cassation, the Supreme Court upheld the judgment of the Court of First Instance imposing a fine on the applicant in respect of the protection of personal data, on the grounds that he had published an article with photographs of a public figure in his private life, without his consent. The high court ruled that, even though the person in question had previously served as a member of the Hungarian Parliament and the European Parliament for several years, this did not mean that his right to privacy could be disproportionately limited. In particular, the publication of the articles and photos concerned in the press, whose sole purpose was to satisfy people's curiosity, could not be regarded as contributing to the social debate. The Supreme Court therefore concluded that, in this case, the exception relating to the exercise of the right to freedom of expression and information did not apply and that the data should be deleted pursuant to Article 17(1)(d) of the GDPR.

*Kúria, judgment of 18/10/2023, Kfv.III.37.318/2023/7. (**HU**)*

Sweden – Supreme Court

Request for extradition by a third State for the purpose of prosecution - Ukraine - Refusal to execute

The Supreme Court refused to comply with an extradition request submitted by Ukraine concerning a male person suspected of resisting the forces of law and order and a law enforcement officer. The person concerned had not agreed to the extradition. In this respect, on the one hand, the Supreme Court ruled that the act of resisting the forces of law and order was provided for under Swedish law and that there were therefore obstacles to extradition. On the other hand, the high court ruled that, particularly given the current war situation and its effects on prison conditions, extradition to Ukraine was incompatible with Article 3 of the ECHR.

*Högsta domstolen, order of 31/10/2023, No B 3926-23 **(SV)***
*Press release **(SV)***

Cyprus – Supreme Constitutional Court

Public procurement - Legitimate interest of an excluded tenderer in contesting the correctness of the successful tender - Grounds on which to rely

The Supreme Constitutional Court confirmed that a tenderer excluded from a public procurement procedure is entitled not only to challenge its exclusion, but also to raise as grounds for annulment the fact that the successful tenderer should also have been excluded on the grounds of a breach of the principle of equality or for reasons identical to those that led to the exclusion of the excluded tenderer.

*Ανώτατο Συνταγματικό Δικαστήριο Κύπρου, judgment of 31/10/2023, Δήμος Λευκωσίας v Κοινοπραξία Cybarco Ltd - A.Aristotelous Constructions Ltd, administrative appeal No 19/17 **(EL)***

Germany – Federal Constitutional Court

Budgetary policy - EU own resources - 'Next Generation EU' recovery plan

The Federal Constitutional Court dismissed as inadmissible an appeal lodged by the parliamentary group 'Alternative für Deutschland' against the Federal Government's participation in the adoption of Decision 2020/2053 on the system of the own resources of the European Union and its participation, together with the Federal Parliament, in the approval of the corresponding ratification law (ERatG). This decision authorised the Commission, on behalf of the Union, to borrow funds on the capital markets of up to EUR 750 billion at 2018 prices, in order to finance the 'Next Generation EU' recovery plan designed to deal with the consequences of the COVID-19 crisis. The high court referred to its judgment of 6 December 2022 (2 BvR 547/21 and 2 BvR 798/21), in which it had held that the ERatG did not raise fundamental constitutional objections and that Decision 2020/2053 did not constitute a manifest overstepping of the Union's budgetary authorisations, nor did it undermine the Federal Parliament's general responsibility for budgetary policy.

*Bundesverfassungsgericht, order of 31/10/2023, 2 BvE 4/21 (**DE**)*
*Press release (**DE**)*

Germany – Federal Constitutional Court

Obligation to make a reference for a preliminary ruling - Right to a court of law - Annulment of a judgment given at last instance

The Federal Constitutional Court set aside the judgment of the Federal Finance Court of 14 August 2019 (I R 34/18) on the grounds that there was no reference for a preliminary ruling under Article 267(3) TFEU, which constitutes an infringement of the right to a legal judge guaranteed by Article 101(1), second sentence, of the Basic Law.
In this respect, the Federal Constitutional Court considered that the Federal Finance Court had not sufficiently examined the obligation to refer a preliminary question to the Court. Despite the incomplete nature of the Court's case-law on the issue in question, the Federal Finance Court incomprehensibly refrained from making a reference for a preliminary ruling on the freedom of establishment laid down in Article 49 TFEU in the context of the tax adjustment of income under Article 1(1) of the German tax law on foreign relations. Thus, by (implicitly) assuming a clear act or an informed act on the basis of the judgment in Hornbach-Baumarkt (C-382/16), that court unjustifiably exceeded its discretionary powers.

*Bundesverfassungsgericht, order of 8/11/2023, 2 BvR 1079/20 (**DE**)*

Germany – Federal Administrative Court

Family reunification - Derived refugee status - Child born and recognised as a refugee in the host State

The Federal Administrative Court ruled that family members of a child born and recognised as a refugee in the host Member State were not entitled to recognition of refugee status on a derivative basis.
The high court held that the condition of the existence of a family in the country of origin, set out in Article 2(j) of Directive 2011/95/EU, related to the family relationship between the beneficiary of protection and the family member applying for derivative protection status. It was therefore not satisfied simply because the minor beneficiary was born into a family that already existed in the country of origin.
Family protection for parents and siblings who are third-country nationals is therefore excluded if the minor beneficiary with refugee status was born in the host Member State, even if the whole family, with the exception of this child, already existed in the country of origin.

*Bundesverwaltungsgericht, judgment of 15/11/2023, 1 C 7.22 (**DE**) Press release (**DE**)*

Germany – Federal Constitutional Court

Budget - Supplementary Budget Act 2021 - Reallocation of budgetary authorisations - Unconstitutionality

The Federal Constitutional Court declared the second Supplementary Budget Act for 2021 unconstitutional and null and void. This act, adopted on 18 February 2022 with retroactive effect to 1 January 2021, was intended to make available for use in future budget years unused credit authorisations of EUR 60 billion, granted by the first Supplementary Budget Act of 2021 to deal with the emergency situation caused by the COVID-19 pandemic and its consequences, by reallocating them to a climate fund. The high court found that the aforementioned act did not meet the constitutional requirements for emergency loans. First, the necessary link between the emergency situation and the crisis management measures financed had not been sufficiently demonstrated. Second, the temporal decoupling of the emergency situation from the actual use of credit authorisations would have contravened the requirements of annuality ('Jährlichkeit' and 'Jährigkeit'). Third, and finally, the adoption of the supplementary budget after the close of the 2021 financial year would be contrary to the budgetary principle of anteriority.

*Bundesverfassungsgericht, judgment of 15/11/2023, 2 BvF 1/22 (**DE**)*
*Press release (**DE**/**EN**)*

Austria – Supreme Court

Civil law - Medical liability - Failure to provide information about the unborn child's disability

The parents of a girl born with a severe physical disability brought a claim for damages against a doctor, arguing that he could have detected the disability during the first-trimester ultrasound screening. If the doctor had informed the parents of the unborn child's disability, they would have opted for an abortion.
In a decision dated 21 November 2023, the Supreme Court upheld the parents' claim, ruling that they should be reimbursed for the damage they had suffered, i.e. all the family allowances and not just the costs arising from the additional needs linked to the disability if the child had not been born, assuming that the parents had been correctly informed by the doctor.

*Oberster Gerichtshof, judgment of 21/11/2023, 3 Ob 9/23d **(DE)***
*Press release **(DE)***

Netherlands – Council of State

Border controls, asylum and immigration - Right to effective access to the labour market for asylum seekers - Employment of up to 24 weeks per year

The Council of State ruled that the Institute for the Management of Insurance for Salaried Employees may no longer make a work permit conditional on the requirement that an asylum seeker may not work for more than 24 weeks a year. In this regard, the Council of State stated that such a requirement is ineffective because it undermines the objective of Article 15(2) of Directive 2013/33/EU, laying down standards for the reception of persons seeking international protection, and the useful effect of that directive, insofar as asylum seekers do not in practice have access to the labour market in the Netherlands for 28 weeks out of a period of 52 weeks. The aim of the directive is to guarantee asylum seekers effective and fair access to the labour market.

*Raad van State, judgments of 29/11/2023, 202305065/1/V6 and 202303122/1/V6 **(NL)***
*Press release **(NL)***

Belgium – Constitutional Court

Environment - Tax on the departure of passengers from a Belgian airport - Chicago Convention

The Belgian legislator introduced a tax on the departure of passengers from a Belgian airport, in particular to encourage the use of less polluting means of transport than air travel. The amount payable is highest when the final destination is less than 500 km away. However, the law provides for a number of exceptions, in particular for passengers transiting through Belgium. The Constitutional Court rejected appeals against this tax. Relying on the case-law of the Court of Justice, it ruled that the tax did not violate Article 15 of the Chicago Convention, which prohibits foreign aircraft from being subject to taxes levied solely on account of their transit through, entry into or exit from the territory. The high court also commented on the balance between freedom to conduct business and the right to protection of a healthy environment.

*Cour constitutionnelle, judgment of 30/11/2023, No 165/2023 **(FR)**/**(NL)***
*Press release **(FR)**/**(NL)***

Slovakia – Constitutional Court

Immigration policy - Withdrawal of residence permit - Opinion of the intelligence service

The Constitutional Court annulled certain provisions of the law on the residence of foreigners on the grounds that they were contrary to the Constitution. These were provisions under which the competent administrative authority was obliged to reject an application for the issue of a residence permit and even to withdraw a residence permit already issued if the intelligence and security service issued an unfavourable opinion in this regard. The Constitutional Court found that by requiring unconditional acceptance of intelligence and security advice, the provisions in question went beyond what was necessary to ensure national security. Moreover, such a requirement represented an interference with the decision-making power of the competent administrative authority.

*Ústavný súd SR, judgment of 13/12/2023, PL. ÚS 17/2022 **(SK)***

Belgium – Council of State

Agreement on the withdrawal of the United Kingdom - Temporary residence permit - Jurisdiction of the Council of State to order interim measures - Clear act

Faced with the refusal of beneficiary status under the Agreement on the withdrawal of the United Kingdom from the European Union, a British worker appealed to the Council for Asylum and Immigration Proceedings, which rejected his application. As part of the appeal in cassation before the Council of State, the worker applied, as a provisional measure, for a temporary residence permit pending the outcome of the appeal.
The Council of State rejected this request on the grounds that there was no provision in EU law requiring it to order such an interim measure. It pointed out that rights could be protected by the courts. Moreover, since the interpretation of the provisions relied on was so obvious as to leave no room for reasonable doubt, there was no need to refer the matter to the Court of Justice.

*Conseil d'État, judgment of 22/1/2024, No 258.513 **(FR)***

France – Constitutional Court

Border controls, asylum and immigration - Setting migration ceilings - Fingerprinting without consent

The Constitutional Council ruled on the Asylum and Immigration Act and partially or totally censured 32 articles as 'legislative riders', i.e. provisions unrelated to the other provisions of the act. Article 1 of the act in question, which provides for Parliament to set the number of foreigners authorised to settle in France by category every 3 years, was also partially censured on the merits by the Council, which saw this practice as undermining the principle of the autonomy of parliamentary assemblies. The merits of Article 38 of the act referred to, authorising the taking of fingerprints and photographs of foreign nationals without their consent, are also censured on the merits. While the Council affirmed that the legislator was pursuing 'the objective of combating illegal immigration, which is part of the safeguarding of public order, an objective of constitutional value', it sanctioned it on the grounds of the lack of procedural guarantees surrounding this practice.

*Conseil constitutionnel, decision No 2023-863 DC of 25/1/2024 (**FR**)*

France – Council of State

Protection of personal data - Baptism register of the Catholic Church - Right to object

The Council of State applies the principle that the Catholic Church may legally refuse requests to remove names from the baptismal register. The Catholic Church must be able to verify that the sacrament of baptism has been received only once in a person's life. However, the definitive deletion of a baptism record could be an obstacle to the Church's verification of this requirement in the event that the person concerned, having obtained this deletion, wishes to rejoin the Christian community and, in particular, to marry in a religious ceremony.
In addition, the data contained in baptism registers is processed in a way that is permitted by the conditions under which it is accessed, stored and archived, as well as by its purpose, which is to monitor the religious history of baptised persons.
Lastly, the Catholic Church's interest in keeping the personal data relating to baptism contained in the register must be regarded as a compelling legitimate reason overriding the applicant's moral interest in requesting the definitive deletion of his data.

*Conseil d'État, judgment of 2/2/2024, No 461093 (**FR**)*

Germany – Federal Constitutional Court

Parliamentary electoral procedure - Minimum electoral threshold of 2% - European elections of 2024

The Federal Constitutional Court dismissed as inadmissible two appeals lodged by the 'Die PARTEI' political party and its chairperson. These were aimed at the German law approving Decision 2018/994 amending the Act concerning the election of the members of the European Parliament by direct universal suffrage ('the Electoral Act'), which requires certain Member States to introduce, for elections to the European Parliament, a minimum threshold for the allocation of seats of between 2% and 5% of the valid votes cast. On this subject, the high court considered that, on the one hand, an infringement of the rules on the division of competences between the Union and the Member States was not a priori identifiable, as the modification of the Electoral Act did not entail any transfer of sovereignty to which the principle of subsidiarity of the first sentence of Article 23(1) of the Basic Law was opposed. On the contrary, the Electoral Act was based on the Union's competence, enshrined in Article 223(1) TFEU, to standardise the electoral procedure for the European Parliament. Secondly, the introduction of the electoral threshold was not contrary to Germany's constitutional identity within the meaning of Article 79(3) of the Basic Law and, in particular, to the principle of democracy embodied therein. In addition, the high court noted that the European Union is itself bound by the principle of democracy and is entitled, within this framework, to regulate electoral law in the European Parliament and to apply a margin of discretion in this regard.

*Bundesverfassungsgericht, order of 6/2/2024, 2 BvE 6/23 and 2 BvR 994/23 (**DE**)*
*Press release (**DE**/**EN**/**FR**)*

Lithuania – Supreme Administrative Court

Protection of personal data - Regulation 2016/679 - Conditions governing the lawfulness of processing

The Supreme Administrative Court ruled that, under Regulation 2016/679, a public information association responsible for ethical issues was entitled to publish on its website the personal data of a journalist who had published material in breach of the rules governing the professional ethics of journalism.
In this regard, the high court ruled that the said association had the right to publish these data, as such processing was necessary to ensure both compliance with a legal obligation and the performance of a mission in the public interest.

*Lietuvos vyriausiasis administracinis teismas, judgment of 7/2/2024, eA-176-525/2024 (**LT**)*
*Press release (**LT**)*

France – Constitutional Court

Protection of workers' health and safety - Organisation of working time - Entitlement to annual paid leave - Suspension of employment contract due to illness or accident

The Constitutional Council ruled that the provisions of the Labour Code preventing paid leave from being earned during periods of sick leave did not infringe the right to rest or the principle of equality before the law.
The Council considered, firstly, that it was open to the legislator, in the light of the objective pursued, to treat as periods of actual work only those periods of absence of the employee due to an accident at work or an occupational disease, without extending the benefit of such treatment to periods of absence due to a non-occupational disease, or even to limit this measure to an uninterrupted period of 1 year. Secondly, insofar as occupational illnesses and accidents at work are distinct from other illnesses or accidents that may affect the employee, the legislator was able to lay down different rules for the acquisition of paid leave entitlements for employees on sick leave depending on the reason for the suspension of their employment contract.

*Conseil constitutionnel, decision No 2023-1079 QPC of 8/2/2024 (**FR**)*

Netherlands – Supreme Court

Social policy - Institutions for occupational retirement provision - Obligation on pension funds to hold own funds

The Supreme Court held that the requirement for pension funds to maintain own funds of a certain size, in addition to own funds to cover future obligations, did not contradict Directive 2016/2341. According to the Supreme Court, the Court of Appeal had rightly ruled that the directive was only aimed at minimum harmonisation and did not prevent Member States from introducing additional requirements in order to protect members and beneficiaries of pensions. Accordingly, the Supreme Court held that the directive left the Netherlands free to adopt additional regulations concerning the own funds that Dutch pension funds were required to hold, even if those pension funds did not offer cover against 'biometric risks' within the meaning of Article 15(1) of the directive, i.e. risks relating to death, invalidity and longevity.

*Hoge Raad, judgment of 9/2/2024, 22/03487 (**NL**)*
*Press release (**NL**)*

Italy – Constitutional Court

Citizens of third countries - Long-term residents - Documentary burdens - Conformity of a regional law with the Constitution

In a judgment handed down on 12 February 2024, the Constitutional Court ruled on the constitutionality of a regional law in Friuli-Venezia Giulia requiring non-EU citizens to submit documents proving that none of the members of the household owned another home in their country of origin or provenance in order to qualify for a rental incentive.
After recalling the Court's case-law on discrimination and the primacy of EU law, the high court declared that the national legislation in question was unconstitutional insofar as it provided that the documents in question had to be presented by non-EU citizens who were long-term residents in a different manner from that provided for Italian citizens and citizens of other EU Member States.

*Corte Costituzionale, judgment of 12/2/2024, No 15 (**IT**)*

Greece – Council of State

Taxation - Regulation No 549/69 - Retirement pensions of former Members of the European Parliament - Additional national taxes

The Council of State confirmed that the national legislation providing for the payment of income tax on the retirement pension received by former Members of the European Parliament (MEPs) complied with EU law, particularly in view of the margin of discretion left to Member States in this area by Decision 2005/689/EC. More specifically, the Council of State considered, on the one hand, that this tax liability does not infringe Regulation No 549/69, given that Members of the European Parliament do not benefit from the tax exemption provided for in Article 12 of Protocol No 7 to the TFEU on the privileges and immunities of the European Union. It also held that, despite the existence of European taxes levied on the basis of the same retirement pension, the levying of additional national taxes did not constitute double taxation contrary to Article12(3) of Decision 2005/689/EC.

*Symvoulio tis Epikrateias, judgment of 14/2/2024, No 200/2024 (**EL**), Summary of judgments (**EL**)*

Greece – Council of State

Public procurement - Directive 2014/24/EU - Public procurement principles - Limits to the obligation to request additional information

As part of a pilot ruling procedure, the full Council of State ruled that the principles of equal treatment, transparency and proportionality laid down in Article 18 of Directive 2014/24/EU did not preclude Act No 4412/2016. This act establishes the obligation for the contracting authority to invite the provisionally selected tenderer to provide additional information within a period of 10 days, before, where appropriate, excluding its application on the grounds that it is incomplete. However, in accordance with the settled case-law of the Court of Justice, the national law at issue must be interpreted as meaning that the contracting authority remains, in all cases, free to assess whether such a request for supplements does not, in a specific case, result in the submission, by a tenderer concerned, of what would in reality appear to be a new tender. In addition, the Council of State considered that this obligation to request additional information, even in the absence of transitional provisions, should be interpreted as applying to competitive tendering procedures in progress on the date of its entry into force.

*Symvoulio tis Epikrateias, Ass., judgment of 16/2/2024, No 211/2024 **(EL)**, Summaries of judgments **(EL)***

Cyprus – Supreme Constitutional Court

Public education service - Award of additional promotion points to male teachers who have served in the National Guard - Eligibility

In its judgment, the Supreme Constitutional Court found that the 2011 amendment to the Public Education Service Act awarding additional promotion points to male teachers who had served in the National Guard was not contrary to the principle of equal treatment between men and women enshrined in the Cypriot Constitution and EU law.
The purpose of this amendment was to compensate for the 2-year delay resulting from the completion of compulsory military service, which, in Cyprus, only men are legally obliged to perform.

*Ανώτατο Συνταγματικό Δικαστήριο Κύπρου, judgment of 20/2/2024, Χαραλαμπία Λαζαρίδου κ.α. ν Κυπριακή Δημοκρατία, administrative appeal No 152/2018 **(EL)***

Czech Republic – Supreme Administrative Court

Agriculture - Designations reserved for dairy products - Plant-based alternatives

The Supreme Administrative Court ruled that the advertising slogan ‘I don’t have to call myself and I am not cream/milk/yoghurt, but you can call me that’ used by a company specialising in the production of soya products was not contrary to Regulation (EU) No 1308/2013, which governs, among other things, the use of names for dairy products.
Relying on the case-law of courts in other Member States, the Supreme Administrative Court found that the slogan in question was not unclear or misleading.

*Nejvyšší správní soud, judgment of 15/3/2023, 4 As 134/2023 **(CS)***
*Press release **(CS)***

Finland – Supreme Administrative Court

Protection of personal data - Search engine - Deletion of search results - Right to be forgotten and right to object - Balancing of interests - Regulation 2016/679

A person had asked Google to remove several links from search results found in which his name appeared, referring to articles published by various media in 2010, the subject of which was a wanted notice concerning him. After Google refused to delete them, the Deputy Data Protection Officer ordered the company to comply with the applicant’s request. However, following an appeal by Google, the administrative tribunal annulled the decision of the Deputy Data Protection Officer.
An appeal was lodged with the Supreme Administrative Court. The Court held that Google had not provided sufficient grounds for demonstrating that, in the present case, the public interest in accessing the data in question outweighed the applicant’s right to respect for his private life and to the protection of personal data when searching under his name. As a result, the said court annulled the decision of the administrative tribunal, while validating the decision of the Deputy Data Protection Officer.

*Korkein hallinto-oikeus, judgment of 19/3/2024, ECLI:FI:KHO:2024:34 **(FI)** **(SV)***

Bulgaria - Supreme Administrative Court and Supreme Court of Cassation

Copyright - Performance in public of recordings of more than one musical work without the consent required by law - Irrelevance of the number of musical works performed

With the interpretative decision of 19 March 2024, handed down jointly by the Supreme Administrative Court and the Supreme Court of Cassation, the pre-existing case-law was unified with regard to the question of whether the public performance of recordings of more than one musical work without the consent required by law constitutes a single or several administrative infringements within the meaning of the national law on copyright and related rights. In essence, these courts held that there was a single administrative infringement and not several infringements and that, consequently, a single administrative penalty could be imposed. Referring to the wording of Article 97, subparagraph 1, point 5 of the said law governing this type of infringement, they considered that this provision did not specify the number of musical works as one of the constituent elements of the said infringement. Unlike Article 172a(1) of the Criminal Code, the said provision is not aimed at protecting the public performance of recordings of a specific musical work, but at providing general protection against the unlawful use of recorded musical works.

*Върховен административен съд и Върховен касационен съд (Varhoven administratien sad et Varhoven kasatsionen sad), interpretative judgment No 1 of 19/3/2024 (**BG**)*
*Press release (**BG**)*

Ireland – High Court

Asylum policy - Dublin III Regulation - Safe third country

On an application concerning the legality of the United Kingdom's designation in domestic law as a 'safe third country', particularly in the light of its controversial immigration policy of transferring asylum seekers to Rwanda to have their claims processed there, the High Court ruled that such a designation was unlawful. In essence, the High Court found that Irish law did not provide for all of the safe third country requirements of EU law and that, therefore, under EU law, the designation of the United Kingdom as a 'safe third country' was invalid.

*The High Court, judgment of 22/3/2024 [2024] IEHC 183 (**EN**)*

Estonia – Supreme Court

Environment - Assessment of the effects of certain projects on the environment - Undersea rail tunnel between Finland and Estonia

The Supreme Court dismissed a commercial company's appeal against the Consumer Protection and Technical Supervision Authority. This was based on the argument that the Commission had wrongly refused to carry out an environmental impact assessment for the project to build an undersea rail tunnel between Finland and Estonia. In this respect, the said court considered that such an assessment was mandatory as part of the authorisation procedure and observed that the tunnel project, as an installation with a significant spatial impact, had not yet been the subject of the specific national planning required. In this context, a strategic environmental assessment should be carried out to decide whether or not to set up such a facility and, if so, in a specific location. According to this court, it was not appropriate to launch environmental impact assessments before a specific national plan had been adopted.

*Riigikohus, judgment of 22/3/2024, No 3-21-2682 (**ET**)*

Germany – Federal Constitutional Court

Right - to parenthood - Biological father - Contested paternity - Unconstitutionality

The Federal Constitutional Court ruled that biological fathers were parents within the meaning of the first sentence of Article 6(2) of the Basic Law and that they were entitled to the fundamental right to parenthood provided for in that provision, even though they were not the legal fathers.
According to Article 1600, paragraph 2 and paragraph 3, first sentence of the German Civil Code, the biological father may only contest the paternity of the legal father if there is or has been no socio-familial relationship between the latter and the child. This regulation was declared incompatible with the first sentence of Article 6(2) of the Basic Law, on the grounds that it did not take sufficient account of the right of biological fathers to parenthood, insofar as it excluded them from obtaining legal paternity.
Consequently, the legislator will have to adopt new regulations by 30 June 2025 at the latest, under which it will be possible to provide for legal parenthood by three parents, i.e. the mother, the biological father and the legal father. On the other hand, if it excluded the legal paternity of more than one father, the biological father would need to have a sufficiently effective procedure to enable him to obtain legal paternity.

*Bundesverfassungsgericht, judgment of 9/4/2024, 1 BvR 2017/21 (**DE**)*
*Press release (**DE**/**EN**)*