COURT OF JUSTICE OF THE EUROPEAN UNION
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# NATIONAL DECISIONS OF INTEREST TO THE EU

## OVERVIEW FOR JUNE - SEPTEMBER 2024

### Sweden – Supreme Administrative Court

***Taxation - Value added tax - Standard rate and reduced rate - Digital learning platform***

The Supreme Administrative Court examined whether licences provided for the use of digital learning platforms in school education should be subject to the standard 25% VAT rate or the reduced 6% rate for the supply of books and similar products. This reduced tax rate also applied to the delivery of the latter products by electronic means, but only if their use was essentially the same as that of the corresponding printed product. The platform provided by the taxable person in question was connected to the basic learning material offered by him in the form of physical and digital manuals. However, the Supreme Administrative Court found that the product in question had a considerably wider range of uses than an equivalent printed publication and should therefore be subject to the standard rate of 25%.

*Högsta förvaltningsdomstolen, judgment of 19/6/2024, No 182-24 (**SV**)*

### France – Court of Cassation

***Freedom to provide services - Paid leave***

In its ruling, the Court of Cassation held that, in order to be exempted from the obligation to join the paid leave fund in question, the employer had to prove that the paid leave entitlements granted to seconded employees were at the same level as those provided for under French law, but also that they could actually be exercised under conditions at least equivalent to those resulting from the mechanism of membership of the paid leave fund. In this particular case, as this second condition had not been verified, it quashed the decision of the Court of Appeal which had held that a company established in a Member State that had granted employees seconded to France leave entitlements equivalent to those provided for under French law during the period of their secondment was not obliged to join the paid leave fund.

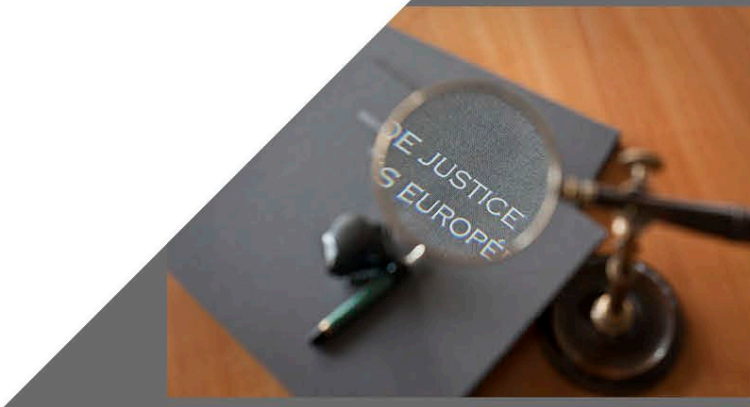
*Cour de cassation, judgment of 19/6/2024, No 21-20.288 (**FR**)*

### Spain – Supreme Court

***Intellectual property - Trade marks - Offence of counterfeit***

The Supreme Court ruled for the first time, in the context of a counterfeiting offence, on the impact of the good faith of the consumer as to the authenticity of the product he or she is buying.
The high court recalled that, while Directive (EU) 2015/2436 requires a degree of similarity between the original and the copy in order to assess the likelihood of confusion, this likelihood does not necessarily have to give rise to an error on the part of the consumer, so that the protection of trade mark rights extends to cases where the consumer is aware that the goods he or she is buying are counterfeit. Thus, it specified that the good faith of the consumer as to the authenticity of the product he or she is buying is not a decisive factor in assessing the existence of an infringement of intellectual property rights. It therefore dismissed the appeal brought before it.

*Tribunal Supremo, judgment of 27/6/2024, No 682/2024 (**ES**)*



## Belgium – Council of State

***Environment - Access to justice - Non-prohibitive cost of legal proceedings***

An association working for the protection of birds brought an action for the annulment of 632 similar decisions authorising the destruction of wood pigeons in various areas. It considered that a flexible approach to related actions, allowing in this case a single action with multiple objects, was necessary, particularly in view of the requirements of the Aarhus Convention.
The Council of State confirmed that the registry fees associated with lodging 632 separate appeals would be prohibitively expensive and would seriously impede the applicant association's access to justice. However, it refused to accept that the contested decisions were related and declared the action inadmissible for all but the first act. The high court certainly emphasised that it was clear from the case-law of the Court of Justice relating to the Aarhus Convention that related actions should be approached in a more flexible manner when it comes to ensuring effective judicial protection in the area of environmental law. However, according to the Council of State, related actions could only be allowed where they were in the interests of the proper administration of justice. In this case, the confused interweaving of the complaints set out for each of the 632 acts in a single plea in law would have made the administration of justice excessively complex.

*Conseil d'État, judgment of 2/7/2024, No 260.368* ***(FR)***

## Poland – Supreme Court

***Independence of judges - Request for disqualification***

The Supreme Court was presented with an application to disqualify a judge of the same court in a case whose purpose was to examine whether another judge, appointed to the Supreme Court on the proposal of the National Council of the Judiciary, as constituted after the 2017 reform, met the requirements of independence and impartiality.
The high court found that a person appointed to the position of Supreme Court judge before the 2017 reform and who had participated in the adoption of the resolution of the combined chambers of the Supreme Court on 23 January 2020, which was deemed unconstitutional, could not express an opinion on the independence of a judge appointed to such a position after the reform and had to be disqualified *ex lege*. In practice, this person would have to rule on the legality of his or her own appointment, contrary to the principle of *nemo iudex in causa sua*. The Supreme Court also observed that the challenged judge had been appointed to his position under a manifestly unconstitutional procedure.

*Sąd Najwyższy, order of 3/7/2024, III CB 26/24* ***(PL)***

## Netherlands – Council of State

***Border controls, asylum and immigration - Examination of an application for right of residence - Application of the principle of prohibition of abusive practices***

The Council of State ruled in two cases concerning applications for right of residence based on Union law. Under Dutch law, an application for residence entitles the applicant to legal residence for the period during which the application is being considered. In this situation, there is no legal basis for detaining a foreign national and, if a foreign national is already in detention at the time of his or her application, he or she must be released.
However, applying the case-law of the Court of Justice in Cases C-110/99, C-251/16 and C-359/16 in order to determine whether there was an abusive practice in this case, the Council of State considered that it was sufficiently plausible that the foreign nationals concerned, through their applications, had sought to artificially create the conditions required to obtain legal residence and thus benefit from the right to be released. As a result, the Supreme Court ruled that the present applications did not grant a right of residence and that the Dutch authorities had rightly detained the foreign nationals. It also ruled that the principle of prohibiting abusive practices was a general principle of Union law and also applied to the detention procedure.

*Raad van State, decisions of 3/7/2024, 202402590/1 and 202402797/1* ***(NL)***
**Press release (NL)**

## Greece – Council of State

***Environment - Assessment of the impact of certain projects on the environment - 5G network***

An action was brought before the Council of State seeking the annulment of the decision granting electronic communication operators rights of use for the 5G network. Meeting in plenary session, the Council ruled on the compatibility of this decision with the European Union's environmental regulations, and dismissed the appeal in its entirety.
Firstly, the Council of State ruled that the contested decision did not constitute a 'plan or programme' and was therefore not subject to an environmental assessment under Directive 2001/42/EC. Although this decision established the obligation to develop the 5G network, it did not define the framework within which these network development projects would be authorised in the future. The main content of the contested decision consisted in setting general objectives for the geographical and demographic coverage, quality and speed of the services provided. In the absence of reasonable doubt, the high administrative court considered that it was not obliged to refer a question to the Court of Justice for a preliminary ruling.
Secondly, the Council of State considered that the contested decision was not likely to infringe the precautionary principle, given the limitations and reference levels set by national regulations on public exposure to electromagnetic waves, taking into account Recommendation 1999/519/EC.

*Symvoulio tis Epikrateias, plenary session, judgment of 10/7/2024, No 1046/2024* ***(GR)***

## Romania – Constitutional Court

***Consumer protection - Credit agreements - Capping of interest rates charged by non-bank financial institutions***

The Constitutional Court was asked to rule on an exception of unconstitutionality raised against the law on consumer protection in relation to credit agreements. Having regard to the principles of equality and *pacta sunt servanda*, it held that the contested provisions concerning, on the one hand, the capping of interest rates charged by non-bank financial institutions and, on the other hand, the right of consumers to ask the financial lender for an amicable review of the agreement if those ceilings are exceeded, were not unconstitutional.
With regard, firstly, to the principle of equality, the high court specified that the introduction of different legal treatment for the categories of consumers targeted by the law was necessary, and rationally and objectively justified on account of their vulnerability. Secondly, with regard to the principle of *pacta sunt servanda*, the Constitutional Court found that the provisions criticised envisaged legal solutions with a view to ensuring contractual equilibrium, given the much greater fluctuations in interest rates charged by non-bank financial institutions compared with those charged by banks on the mortgage market.

*Curtea Constituțională, judgment of 11/7/2024, No 379 (**RO**)*

## Netherlands – Supreme Court

***Environment - Noise at airports***

The Supreme Court ruled on experimental measures taken by the Dutch government to limit the noise impact on residents living in the vicinity of Amsterdam's Schiphol airport. The measures concerned new limits on noise levels, rules for the use of preferential runways and the abolition of the policy of tolerance in the event of parameters being exceeded.
The national court ruled that the proposed measures had the effect of limiting access to Schiphol or its operational capacity by reducing the number of air movements from 500,000 to 460,000 per year. As such, these measures constituted noise-related operating restrictions within the meaning of Regulation No 598/2014 and could therefore only be implemented after being assessed in accordance with the procedure laid down by the International Civil Aviation Organization in order to deal with noise in an economically efficient manner. According to the Supreme Court, it did not follow from the wording or objectives of the regulation that temporary and experimental measures such as those at issue should be excluded from the scope of this approach.

*Hoge Raad, decision of 12/7/2024, 23/03380 **(NL)***
**Press release (NL)**

## Greece – Council of State

***Border controls, asylum and immigration - Application for international protection - Enforcement of extradition decision***

The Council of State, hearing an appeal seeking the annulment of the decision authorising the extradition of a Turkish national to Turkey, clarified the relationship between a request for extradition and a request for international protection, governed by Directive 2013/32/EU.
In this case, while a request for international protection made by the applicant was being examined, the minister granted an extradition request made by Turkey against the same person. The question then arose as to the extent to which, and at what point in time, a decision in favour of extradition could be made, taking into account the principle of non-refoulement and the applicant's right to remain in the country pending a 'final' decision on his or her application for international protection.
After harmonising the interpretation of the notion of 'final' decision with that resulting from the case-law of the Court of Justice, the high administrative court found that it was possible to adopt a decision ordering extradition without waiting for the 'final' decision on the request for international protection. However, the execution of such an extradition decision was to be suspended automatically until the adoption of a 'final' decision within the meaning of the above-mentioned directive, as interpreted by the Court of Justice, i.e. until a decision had been taken on the application for a judicial review of the rejection of the application for international protection.

*Symvoulio tis Epikrateias, judgment of 15/7/2024, No 1129/2024 **(GR)***

## Germany – Federal Finance Court

***Freedom to provide services - Taxation of sports betting***

The Federal Finance Court once again confirmed that taxing sports betting at a rate of 5% of the stakes was constitutional and compatible with Union law, particularly with regard to the freedom to provide services.
This court considered that there was no unlawful restriction on the freedom to provide services. Since domestic and foreign service providers were affected in the same way and under the same conditions, taxation did not lead to direct discrimination against foreign service providers. Moreover, even if it were accepted that there was indirect discrimination, the restriction would be justified by overriding reasons in the general interest, in particular consumer protection and the prevention of fraud, as well as encouraging citizens to avoid excessive expenditure on games of chance.
As regards constitutional law, the tax court pointed out, with reference to its two judgments of 17 May 2021 (IX R 21/18 and IX R 20/18), that there was no breach of the principle of equal treatment, in particular between sports betting, on the one hand, and online casino and poker games, on the other, nor any breach of the freedom to pursue a professional activity as a result of the taxation.

*Bundesfinanzhof, judgment of 16/7/2024, IX R 6/22 **(DE)***

## Germany – Federal Finance Court

***Taxation - Value added tax - Intra-Community triangular transactions***

Following on from the Luxury Trust Automobil judgment (C-247/21) delivered in response to a request for a preliminary ruling from the Austrian Administrative Court, the Federal Finance Court ruled that the post-clearance rectification of invoices had no retroactive effect on the absence of a statement concerning the existence of an intra-Community triangular transaction and the VAT liability status of the last purchaser.
The high court emphasised that this did not apply only, as the applicant claimed, in cases of VAT fraud, but generally in triangular transactions. According to the Court, proof that the recipient of the supply had been designated as the person liable to pay VAT was a fundamental condition of the fiction of VAT liability.

*Bundesfinanzhof, judgment of 17/7/2024, XI R 35/22 (XI R 14/20) (DE)*

## Bulgaria - Supreme Administrative Court

***Freedom to provide services - Lawyers - Requirements relating to the exercise of professional activity***

The Supreme Administrative Court ruled that in order to practise, lawyers had to certify, by means of an annual sticker affixed to their professional card, that they had paid a monthly fee to the Bar Association under the Law on the Bar.
It thus confirmed the decision of the Conseil supérieur des ordres des avocats, which provided that lawyers' cards would be validated by affixing an annual sticker. In the opinion of the Supreme Administrative Court, no restriction on the exercise of the profession of lawyer arises from the aforementioned decision, since it does not directly affect the legal status of lawyers. Accordingly, that decision was held to be in accordance with the case-law of the Court of Justice, in particular the judgment of 13 January 2022 in Case C-55/20, Minister Sprawiedliwości, according to which the disciplinary rules specific to the professional bodies of lawyers are not rules conditioning access to the pursuit of the activity concerned by means of a formal act of the competent authorities authorising that activity, but 'requirements' relating to the pursuit of that activity as such, which are not, in principle, subject to an authorisation system within the meaning of Article 4(6) of Directive 2006/123/EC.

*Върховен административен съд (Varhoven ,administrativen sad), judgment of 23/7/2024, administrative case No 8301/2023 (BG)*

## Germany – Federal Constitutional Court

***Elections - Federal law of 2023 - Electoral threshold***

The Federal Constitutional Court ruled that the Federal electoral law of 2023 reforming electoral law and aiming to reduce the size of the Bundestag complied in principle with the Constitution, with the exception of the 5% electoral threshold provided for in its amended version.
Among other things, this law had introduced the 'second vote coverage procedure' ('Zweitstimmendeckungsverfahren'), under which candidates who are members of parties with the most first votes in their constituencies only obtain a mandate in the Bundestag under certain conditions, based on the results of the second votes. However, independent candidates obtain a mandate independently of this procedure. The constitutional court did not object to this procedure, which now limits the Bundestag to 630 seats.
However, the high court found that modifying the electoral threshold in such a way that parties obtaining less than 5% of the second votes at national level were not taken into account in the distribution of seats constituted an inequality of treatment that was not entirely necessary.
In this context, it was pointed out that the objective of this threshold, that of avoiding the fragmentation of the Bundestag, would also be achieved if the results of the second votes of parties cooperating in the form of a parliamentary group were taken into account together. However, the legislator was not obliged to introduce such a modification, but could modify the electoral threshold in another way.

*Bundesverfassungsgericht, judgment of 30/7/2024, 2 BvF 1/23, 2 BvR 1547/23, 2 BvR 1523/23, 2 BvE 10/23, 2 BvE 9/23, 2 BvE 2/23, 2 BvF 3/23 (DE)*
**Press release (DE/EN)**

## France – Court of Cassation

***European arrest warrant - Grounds for optional non-execution - Possibility for the executing State authority to request additional information***

Relying on the judgment of 6 June 2023, O. G. (European arrest warrant for a third-country national, C-700/21), the Court of Cassation recalled that, in accordance with the principle of mutual recognition, the execution of the European arrest warrant is the principle and refusal of execution, which is authorised only on the grounds of mandatory or optional non-execution under Framework Decision 2002/584/JHA, is an exception, to be interpreted strictly. It considered that, in the absence of a plea based on the optional reason for refusal to surrender provided for in the Code of Criminal Procedure, the judges could not request additional information in order to verify whether the conditions for application of that article had been met. Accordingly, it censured the decision of the examining chamber that had ordered such additional information, even though it was in a position to ascertain that the person concerned, who had not submitted a statement to the examining chamber, but only documents that could not be analysed as a statement, had not relied on this optional reason for refusal to surrender.

*Cour de cassation, judgment of 7/8/2024, No 24-81.863 (**FR**)*

## Italy – Court of Cassation

***European arrest warrant - Double criminality - Sentence threshold***

The Court of Cassation ruled on the double criminality requirement for tax offences, in the context of a European arrest warrant issued by the Romanian authorities for a Romanian citizen for driving without a licence and smuggling.
In its judgment, the national court specified that, in the case of tax and customs offences, the condition of double criminality, where it applies in connection with the execution of a European arrest warrant, does not require the national law of the executing Member State to impose the same type of tax or duty, or to lay down the same rules in that regard as the issuing Member State.
The high court found that, in this respect, it is only important that the offence be punishable under both legal systems, provided that the case provided for under the legal system of the issuing State and that provided for under the Italian legal system are 'analogously comparable'.

*Corte Suprema di Cassazione, judgment of 8/8/2024, No 32377 (**IT**)*

## Denmark – Supreme Court

***Citizenship of the Union - Right of free movement and residence - Retention of the right of residence by family members in the event of divorce***

X, a Pakistani citizen, had married Y, a Danish citizen, in October 2014 and had obtained, with effect from July 2015, a residence permit in Denmark as a family member accompanying Y. The latter had filed for divorce with the State in August 2017. In October 2017, the State had brought the case before the Copenhagen Municipal Court, and the divorce had been granted by the Municipal Court in January 2018.
The question put to the Supreme Court was whether the divorce proceedings should be considered to have begun on the date of filing with the State or with the court. Basing itself on Article 13(2)(a) of the Residence Directive (Directive 2004/38/EC) and the case-law of the Court of Justice, the Supreme Court recalled that divorce proceedings are deemed to have begun when one of the parties files an application for divorce. In this case, it ruled that as the marriage had not lasted more than 3 years, the applicant did not have to retain the right to reside in Denmark in accordance with EU residence rules. X's right of residence came to an end following the divorce.

*Højesteret, judgment of 14/8/2024, BS-57054/2023-HJR (**DA**)*

## Germany – Federal Administrative Court

***Judicial proceedings - Provisional judicial protection - Freedom of expression and of the press - Ban on a magazine***

The Federal Administrative Court upheld the application by COMPACT-Magazin GmbH for interim judicial protection to continue operating as a press and media company during the proceedings relating to the action by the Federal Ministry of the Interior to ban it.
By decision of 5 June 2024, executed on 16 July 2024, the Federal Ministry of the Interior ordered the banning and dissolution of COMPACT on the grounds that its objectives and activities were contrary to the constitutional order. On 24 July 2024, COMPACT lodged an appeal against this decision and an application for interim judicial protection.
In these second proceedings, the Federal Administrative Court found that it was not possible to assess definitively whether COMPACT fulfilled the grounds for prohibition based on the rejection of the constitutional order. It should also be possible to consider less restrictive measures.
Admittedly, there was some evidence that certain comments made in printed publications and disseminated online revealed, in particular, an attack on human dignity and that COMPACT, through its own rhetoric, adopted an aggressive attitude towards elementary constitutional principles in many articles.
However, there was some doubt as to whether the passages violating human dignity were so striking that the ban was justified from the point of view of proportionality. A large proportion of the articles published in COMPACT magazine could not be challenged on the grounds of freedom of expression and freedom of the press.

*Bundesverwaltungsgericht, order of 14/8/2024, 6 VR 1.24 **(DE)***
**Press releases (DE)**

## Austria – Supreme Court

***Protection of personal data - Right of access - Medical records***

The Supreme Court ruled on the limitation, under Article 23 of the GDPR, of the right of patients of a hospital to obtain a copy of their medical records free of charge. The national provision in question provided for obtaining such a copy only against payment.
The high court noted that the Court of Justice had already ruled on the right to obtain such a copy free of charge, but without ruling on a limitation for economic reasons. However, on the basis of the case-law of the Court of Justice, according to which limitations on the rights of data subjects must be applied restrictively, the Supreme Court found that there was no sufficient economic or financial interest on the part of the Federal State of Austria within the meaning of Article 23(1)(e) of the GDPR to restrict the patient's right to a free copy.

*Oberster Gerichtshof, judgment of 27/8/2024, 6 Ob 233/23t **(DE)***

## Czech Republic – Supreme Administrative Court

***Fundamental rights - Right of assembly***

The Supreme Administrative Court ruled that the administrative authority could not prohibit, as a preventive measure, a duly-announced rally on the sole grounds that it had been convened under the slogan 'From the River to the Sea, Palestine will be free'.
However, according to the high court, this slogan could justify a restriction on the right to assemble, provided that the circumstances of the case were taken into account. In this case, it pointed out that the disputed slogan could have up to five different meanings. In this instance, it ruled that its use for the gathering in question was intended to promote peace and was therefore in no way unlawful or extremist.

*Nejvyšší správní soud, judgment of 28/8/2024, 6 As 85/2024 **(CS)***
**Press release (CS)**

## Austria – Administrative Court

***Environment - Environmental organisations - Right of appeal***

The question before the Administrative Court was whether an environmental protection organisation had a right of appeal in proceedings relating to the forced slaughter of animals listed in Annex V of the Habitats Directive, namely a species of game. The high court ruled that the existence of such a right of appeal, provided for in the hunting law of the *Land* of Upper Austria, complied with Union law. Relying on the case-law of the Court of Justice on access to justice in environmental matters, the Administrative Court considered that recognition of this right of appeal fell within the theory of the 'acte clair'. In this case, the Court annulled the decision ordering the compulsory slaughter of chamois on the grounds of illegality.

*Verwaltungsgerichtshof, order of 3/9/2024, Ra 2023/03/0154-17 **(DE)***

**Romania – High Court of Cassation and Justice**

***Criminal liability - Protection of the European Union's financial interests - Interruption of the limitation period***

In an appeal lodged in the interests of the law, the High Court of Cassation and Justice ruled that procedural acts carried out before 25 June 2018 had the effect of interrupting the limitation period for criminal liability, regardless of the amount of the loss, without it being necessary to make a concrete assessment of a systemic risk of impunity. This decision concerns all pending cases relating to offences against the Union's financial interests and corruption offences. However, the limitation period for criminal liability is interrupted only if the relevant criminal code or special legislation is more favourable in the version in force between 1 February 2014 and 24 June 2018.

*Înalta Curte de Justiție și Casație, judgment of 16/9/2024, No 16 (**RO**)*

**Poland – Supreme Court**

***Consumer protection - Mortgage loan indexed to a foreign currency***

The issue before the Supreme Court was whether proceedings for the annulment of a mortgage loan, indexed on a foreign currency, against a bank that was the subject of resolution proceedings could be considered as proceedings for a claim that had to be reported to the bankruptcy estate. The ultimate objective was to determine whether or not proceedings to establish the nullity of a mortgage loan should be suspended.
In this case, the high court ruled that such proceedings did not constitute proceedings for such a claim and could therefore be resumed after the appointment of a trustee.

*Sąd Najwyższy, resolution of 19/9/2024, III CZP 5/24 (**PL**)*

# Previous decision

**Sweden – Supreme Court**

***Transport - Driving licence - Using a false document***

In criminal proceedings, the Supreme Court acquitted the defendant, who held a Swedish driving licence obtained in January 2021, in exchange for his Hungarian driving licence. The defendant had already acquired the latter licence by exchanging it for an Uzbek driving licence. However, in October 2021, the Hungarian authorities had ordered the withdrawal of the Hungarian driving licence after it was established that no driving licence had ever been issued in Uzbekistan. In Sweden, the licence had been withdrawn and the individual had been prosecuted for using a false document and illegal driving. However, the Supreme Court concluded that, in the light of the principle of legality under criminal law and Union law, the Swedish licence was valid until it was withdrawn, given that the Hungarian licence was valid at the time it was exchanged for the Swedish driving licence.

*Högsta domstolen, judgment of 3/4/2024, No B 1103-23 (**SV**)*
**Press release (EN)**