



FLASH NEWS

4/24

MONITORING OF PRELIMINARY RULINGS OVERVIEW FOR JUNE - SEPTEMBER 2024



Germany – Federal Constitutional Court

[Achmea, [C-284/16](#)]

Primacy of EU law – Arbitration clauses – Intra-EU investment protection agreements

The Federal Constitutional Court dismissed as inadmissible the constitutional appeal against the judgment of the Federal Court of Justice following the Achmea judgment of the Court of Justice. In that judgment, the Federal Court of Justice annulled an arbitration award made on the basis of an investment protection agreement between the Netherlands and Slovakia.

From the outset, the Constitutional Court pointed out that the interpretation of Union law is the responsibility of the Court of Justice and that the Federal Court of Justice is in principle bound by this interpretation.

In that context, it pointed out, first, that it is clear from the Achmea judgment that the arbitration clauses contained in the investment protection treaties concluded between Member States, such as Article 8(2) of that agreement, are incompatible with Articles 267 and 344 TFEU. This judgment therefore leaves no room for manoeuvre and, in this case, the arbitration award must be set aside.

Second, the Constitutional Court found that it had not been demonstrated that the Federal Court of Justice should not have considered itself bound by the Achmea judgment on the grounds that this judgment would constitute an ultra vires act or that it would not respect the minimum standards of protection of fundamental rights within the meaning of the reservation formulated by the Court in the Solange II judgment.

*Bundesverfassungsgericht, [judgment of 23/7/2024, 2 BvR 557/19 \(DE\)](#)
[Press release \(DE/EN\)](#)*



Netherlands – Council of State

[Confiance mutuelle en cas de transfert, [C-392/22](#)]

Asylum and immigration – Application for international protection – Summary removal practices

Relying on the judgment of the Court of Justice in Case C-392/22, the Council of State ruled that the decision of the Minister for Asylum and Migration to reject a foreign national's application for international protection without examining it on the grounds that another Member State, in this case Poland, was responsible for examining it, was not sufficiently reasoned. In this respect, the Council of State considered that the Minister had wrongly failed to assess the statements made by the applicant for international protection during the registration phase of his asylum application. The applicant had stated, among other things, that he had been summarily returned to Belarus on three occasions after entering Poland. According to the Council of State, the Minister should have assessed these statements in the light of information that he had collected on his own initiative and which, given the alleged systemic failings of the asylum procedure and the conditions under which applicants for international protection were received in Poland, he should not have ignored.

*Raad van State, [judgment of 4/9/2024, 202402084/1/V3 \(NL\)](#)
[Press release \(NL\)](#)*



Finland – Supreme Court

[Telia Finland, [C-201/22](#)]

Intellectual property rights – Collective management organisation – Legal standing

Following the reasoning of the Court of Justice in Case C-201/22 concerning Directive 2004/48/EC, the Supreme Court dismissed as inadmissible the claim brought before it. The claim had been brought against a television retransmission company (Telia) by an intellectual property rights collective management organisation (Kopioisto). The claim was dismissed on the grounds that this organisation did not have the right to bring an infringement action in its own name on behalf of the rights holders it represented as the body responsible for granting 'contractual licences'.

Korkein oikeus, [judgment of 20/9/2024 ECLI:FI:KKO:2024:53 \(FI/SV\)](#)

Previous decisions



Spain – Labour Court No 1 of Madrid

NC (Transfert d’une étude notariale espagnole), [C-583/21 to C-586/21](#)]

Social policy – Transfer of a notary’s practice – Maintaining employees’ rights

Taking into account the judgment of the Court of Justice in Joined Cases C-583/21 to C-586/21, Labour Court No 1 of Madrid considered that, in the case of the succession of notaries within a firm, if the identity of the firm, the staff employed and the assets of the previous notary are taken over by the new notary, this constitutes a genuine transfer of an undertaking. An employee transferred in this context is therefore fully entitled to have the date on which he joined the notary’s firm taken into account as the date of seniority in his career. Having regard to these considerations, the Labour Court ruled that, in the case in point, the clause relating to the trial period of one of the firm’s employees was null and void and, consequently, that his dismissal had been unfair.

Juzgado de lo Social no 1 de Madrid, [judgment of 13/12/2023 No 342/2023 \(ES\)](#)



Romania – High Court of Cassation and Justice

[Direcția pentru Evidența Persoanelor și Administrarea Bazelor de Date, [C-491/21](#)]

Union citizenship – Issuing an identity card

Pursuant to the judgment of the Court of Justice delivered under the preliminary ruling procedure, the High Court of Cassation and Justice ruled that the request of the applicant, a lawyer of Romanian nationality domiciled in France and practising in both France and Romania, for an identity card should be granted. As a reminder, the Court of Justice had pointed out that the right to move and reside freely within the territory of the Member States, as enshrined in Article 21 TFEU and Article 45(1) of the Charter of Fundamental Rights of the European Union and specified, in its conditions of exercise, by Directive 2004/38/EC, precluded legislation of a Member State under which a citizen of the Union who is a national of that Member State and who has exercised his right of free movement and residence in another Member State is refused an identity card that is valid as a travel document within the European Union solely on the grounds that he has established his residence in the territory of that other Member State.

Înalta Curte de Casație și Justiție, [judgment of 2/4/2024, No 1872 \(RO\)](#)