



## FLASH NEWS

2/19

# FOLLOW-UP OF PRELIMINARY RULINGS

## OVERVIEW FROM JANUARY TO FEBRUARY 2019



### Belgium – Court of cassation

[IK ruling, [C-551/18 PPU](#)]

#### ***European arrest warrant - Content - Absence of mention of an additional sentence***

Following the ruling of the Court of Justice issued under the urgent preliminary ruling procedure, the Court of Cassation confirmed the decision by which the Sentence Enforcement Court had upheld the deprivation of a prisoner's liberty at the end of his main sentence, with a view to the enforcement of an additional sentence.

Agreeing with the Court's reasoning, the Court of Cassation held that the validity of this decision was not affected by the fact that the additional sentence was not mentioned in the European arrest warrant under which the person concerned had been surrendered to the Kingdom of Belgium by another Member State.

*Hof van Cassatie*, [Ruling of 22/01/2019 TOULOUSE](#)



### France – Court of cassation

[[Apple Sales International and Others](#) ruling, [C-595/17](#)]

#### ***Judicial cooperation in civil matters - Regulation No 44/2001 - Jurisdiction clause***

The Court of Cassation found that the French courts lacked jurisdiction to hear an action for damages brought on the basis of Article 102 TFEU by a distributor against Apple, its supplier. Indeed, endorsing the interpretation of Article 23 of Regulation (EC) No 44/2001 given by the Court of Justice in the [Apple Sales International and Others](#) judgement (C-595/17), the Court of Cassation held that the jurisdiction clause contained in the contract between the parties, which referred to the Irish courts, was not excluded on the sole ground that it did not expressly refer to disputes relating to liability incurred as a result of an infringement of competition law.

The Court of Cassation also applied the [Interedil](#) case law ([C-396/09](#)) to justify the annulment of the Court of Appeal's ruling, which had merely complied with a first judgement of the Court of Cassation in this case.

*Court of Cassation*, [ruling of 30/01/2019 \(FR\)](#)

 **Netherlands** – Amsterdam Court of Appeal

[Hauck ruling, [C-205/13](#)]

**Trademarks - Directive 89/104 - Grounds for refusal or invalidity - "Tripp Trapp" adjustable child chair .**

After 20 years of litigation, the Amsterdam Court of Appeal rendered a decision terminating the case which gave rise to the preliminary referral in Case C-205/13, concerning an application for annulment of the Benelux trademark for a sign in the shape of the 'Tripp Trapp' adjustable child chair .

The Court of Appeal considered that the shape of the said child's chair clearly contributes to the its utilitarian characteristics. This form gives substantial value to the chair. Consequently, it held that the shape of the said chair cannot be registered as a trademark. However, the chair is protected by copyright.

Gerechthof Amsterdam, [ruling of 05/02/2019 \(NL\)](#)

 **Netherlands** – District Court of the Hague

[Louboutin and Christian Louboutin ruling, [C-163/16](#)]

**Trademarks - Directive 2008/95 - Grounds for refusal or invalidity - Trademark consisting of a colour applied to the sole of a high-heel shoe**

The District Court of the Hague rejected the company Van Haren's objection to the court's default judgement in which it partially upheld Christian Louboutin's claims in the latter's action for infringement of the mark consisting of the colour red applied to the sole of a high heel shoe.

On the basis of ruling C-163/16, the Court held that the Benelux trademark in question is valid, provided that Article 2.1 of the Benelux Convention on Intellectual Property is interpreted in the light of Directive 2008/95. According to the Court, this conclusion is not called into question by Directive 2015/2436, since it has not yet been transposed and it is not possible to interpret the Convention in accordance with such Directive.

Rechtbank Den Haag, [ruling of 06/02/2019 \(NL\)](#)

 **Belgium** – Council of State

[Vaditrans ruling, [C-102/16](#)]

**Road transport - Weekly rest periods for drivers taken in their vehicles**

Basing itself on the interpretation of Regulation (EC) No 561/2006 given by the Court of Justice in the Vaditrans judgement (C-102/16), the Council of State confirmed the validity of a Royal Decree providing for criminal penalties for truck drivers who take their mandatory weekly rest periods in their vehicles and not elsewhere.

The Council of State concluded that this decree was compatible with the principle of the legality of offences and penalties. Since, according to the Court, such regulation must be interpreted as prohibiting drivers from taking such rest periods in their vehicles, the Council of State concludes that a mere reference to it in the Decree satisfies the requirement that offences must be clearly defined.

Raad van State, [ruling of 07/02/2019 \(NL\)](#)

 **Germany** – Regional Court of Hamburg

[Scotch Whisky Association ruling, [C-44/17](#)]

**Protection of geographical indications for spirit drinks - Misleading indication**

The Regional Court of Hamburg granted an injunction concerning the marketing of a whisky produced in Germany under the name "Glen Buchenbach". Agreeing with the reasoning of the Court of Justice in Case C-44/17, the Regional Court considered that this is a misleading indication within the meaning of Article 16(c) of Regulation (EC) No 110/2008. According to the Regional Court, whiskies containing the element "Glen" in their name are for the most part "Scotch whiskies", which is why this element is likely to create the false impression among an average European consumer, normally informed and reasonably attentive and prudent, that it is a Scotch Whisky.

Landgericht Hamburg, [ruling of 07/02.2019 \(DE\)](#)

## Previous decisions



### Romania – Constitutional court

[Coman and Others ruling, [C-673/16](#)]

#### ***Free movement of persons - National provisions prohibiting the recognition of same-sex marriages - Constitutionality - Conditions***

The Romanian Constitutional Court was petitioned regarding a case concerning the constitutionality of the provisions of the Civil Code which, on the one hand, prohibit the recognition of same-sex marriages concluded or contracted abroad by Romanian citizens or by foreigners and, on the other hand, recognise the applicability of the provisions relating to the right to free movement on Romanian territory only to citizens of Member States and the European Economic Area.

The Constitutional Court endorsed the interpretation of the Court of Justice in *Coman and Others*, C-673/16 and accepted the exception based on the unconstitutionality of the provisions of the Civil Code. It judged that said provisions should be considered constitutional only insofar as they allow the granting of a right of residence in the territory of Romania, under the conditions provided for by Union law, to spouses, citizens of a Member State, or citizens of a third State who have concluded or contracted same sex marriages in a Member State of the Union.

*Curtea Constituțională a României*, [ruling of 18/07/2018 \(RO\)](#)

### Poland – Regional Court of Poznań

[HR ruling, [C-512/17](#)]

#### ***Judicial cooperation in civil matters - Habitual residence of the child - Circumstances determining the place of such residence***

The Regional Court of Poznań dismissed the appeal against the decision of the Local Court of Poznań-Stare Miasto in proceedings concerning the exercise of parental responsibility brought by the mother of a child with dual Polish and Belgian nationality who applied for the establishment of the child's place of residence in her own place of residence. The Local Court of Poznań-Stare Miasto had endorsed the Court's interpretation in the HR, C-512/17 ruling, concerning the decisive circumstances for establishing the place of residence, and had rejected said application on the ground that the Polish courts lacked international jurisdiction. In the course of the appeal proceedings, the applicant had taken the view that the Local Court of Poznań-Stare Miasto should not follow the case law of the Court, given that the Regional Court of Poznań had decided differently on the merits before the preliminary referral was lodged. The Regional Court of Poznań recalled that, according to the *Georgi Ivanov Elchinov* ([C-173/09](#)) ruling, Union law precludes a national court which is responsible for deciding on a referral made to it by a higher court on appeal from being bound, in accordance with national procedural law, by assessments made in law by the higher court, if the national court considers, that such assessments are not in accordance with Union law with regard to the interpretation it has requested from the Court.

*Sąd Okręgowy w Poznaniu*, [ruling of 17/10/2018 \(PL\)](#), available upon request

The intranet site of the Research and Documentation Directorate lists all analyses of follow-up decisions received and processed by the Directorate since 1 January 2000, classified by year according to the date on which the case was brought before the Court. All the analyses established in the context of the follow-up of preliminary rulings are also available via the internal portal, under each preliminary ruling, under the heading 'disputes at national level'.