



FLASH NEWS

1/17

NATIONAL DECISIONS OF INTEREST FOR THE UNION

OVERVIEW FROM 1st JULY TO 12 JULY 2017



Cyprus– Supreme court

Principle of equal treatment - Establishment of quotas based on sex - Violation

Upon a referral from the President of the Republic, the Supreme court declared a national law, seeking to establish quotas based on sex for the appointment, by the Council of Ministers, of the members of the council of semi-governmental organisations, i.e. autonomous public utility organizations supervised by Ministers whose majority stakeholder is the State, as being incompatible with the principle of equal treatment, as guaranteed by the Cypriot Constitution. In fact, according to the said Court, the provision in question favours, without any valid justification, women as compared to other applicants who are potentially more appropriate for the post, in violation of the objective criteria provided for by the said law.

Ανώτατο Δικαστήριο Κύπρου, [opinion of 05.07.2017, Πρόεδρος της Δημοκρατίας και Βουλή των Αντιπροσώπων, n° 2/2016 \(GR\)](#)



Cyprus– Supreme court

European arrest warrant - Execution after the end of the time-periods set out by the framework decision

The Supreme court was referred an appeal pertaining to a decision relating to the execution of a European arrest warrant and issued after the end of the time-periods set out in article 17 of framework decision 2002/584, relating to the European arrest warrant and the surrender procedures between Member States. It found that, like the decisions of the Court in the judgments *F* ([C-168/13 PPU](#)) and *Lanigan* ([C-237/15 PPU](#)), the mere expiry of the fixed deadlines cannot prevent the continuation of the procedure of executing the European arrest warrant and surrendering the person sought.

Ανώτατο Δικαστήριο Κύπρου, [ruling of 06.07.2017, Ανδρέας Γεωργίου και Γεωργός Εισαγγελέας Κύπρου, Appel Civil. n°](#)



France – Court of cassation

Liability regime for defective products - Office of the national judge

The joint bench of the Court of cassation ruled on the office of the national judge in the context of the special liability regime for defective products, as resulting from directive 85/374/EEC.

In this regard, it considered that if the judge does not have, except in case of special rules, the obligation of changing the legal basis of the appeals, he is required, when the facts put before him justify the same, to apply the public policy rules resulting from the Union law, such as the liability for defective products, even if they had not been invoked by the applicant.

Court of cassation, joint bench, [ruling of 7.07.2017, no. 15-25.651 \(FR\)](#)

[Explanatory note \(FR\)](#)



France – Council of State

Environment - Directive concerning ambient air quality - Power of injunction of the administrative judge

Recalling the case law of the Court applicable in this regard (*ClientEarth*, [C-404/13](#)), the Council of State has stated the obligations binding on Member states, pursuant to directive 2008/50/EC on ambient air quality, in case the threshold values stated in this text are exceeded as well as the powers of the court that may be referred a case relating to the compliance of the national authority with these obligations. In this instance, it ordered the Prime Minister and the Minister in charge of the environment to take measures to prepare and implement plans to bring the concentrations of nitrogen dioxide and PM10 fine particulate matter below the threshold values in certain areas as soon as possible.

Council of State, [ruling of 12.07.2017, Association Les Amis de la Terre, no. 394254 \(FR\)](#)

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



 **Poland – Supreme court**

Posted workers - Employer exercising its activities in two Member states - Determination of the Member State of normal exercise of activities

In the context of a dispute pertaining to a refusal to issue a social security certificate, the Supreme court ruled on the criteria allowing to determine the place where a temporary employment agency normally exercises its activities, in pursuance of article 12 of regulation no. 883/2004 on the coordination of social security systems. Supporting the case-law of the Court, it held that, in this regard, it is the responsibility of the competent court to examine all the criteria characterising the activities exercised by this agency, while adapting the selection of the criteria to each specific case. The amount of the turnover realised in the Member State concerned cannot be the only criterion taken into account for this purpose.

Sąd Najwyższy, [ruling of 12.07.2017, II UK 335/16 \(PL\)](#)



United Kingdom – Supreme court

Survivor's pension - Difference in treatment between homosexual and heterosexual couples

The Supreme court considered a legislative provision, seeking to limit the amount of the survivor's pension provided to the surviving spouse of the same sex, to be incompatible with directive 2000/78, establishing a general framework in favour of equal treatment in matters of employment and occupation. In fact, as it is clear from the rulings of *Maruko* ([C-267/06](#)) and *Römer* ([C-147/08](#)), homosexual couples having registered a civil partnership or entered into marriage can receive such benefits under conditions different from those of married heterosexual couples only when it is established that their treatment on equal terms would risk leading to consequences that are unacceptable from the economic and social point of view.

Supreme Court, [ruling of 12.07.2017, Walker v Innospec Ltd and others, no. \[2017\] UKSC 47 \(EN\)](#)

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