



FLASH NEWS

1/21

NATIONAL DECISIONS OF INTEREST TO THE EU

OVERVIEW OF THE MONTHS FROM SEPTEMBER 2020 TO MARCH 2021



Poland – Supreme Administrative Court

Principle of free movement – Non-discrimination against LGBT persons

The Supreme Administrative Court annulled the decision of the Poznań voivodship administrative court regarding a decision of a local council creating ‘LGBT-free zones’, which were deemed to discriminate against LGBT persons. In this regard, the high court rejected the administrative court’s argument that a decision by a municipal council, such as the one referred to in the case at hand, did not constitute a measure of local law and, consequently, did not fall under the jurisdiction of the administrative courts. Consequently, the Supreme Administrative Court referred the case back to the administrative court for reconsideration of the merits of the case.

Naczelny Sąd Administracyjny, [order of 25/9/2020, I OSK 1256/20 \(PL\)](#)



France – Council of State

Liability of the State in respect of the exercise of its judicial function – Detailed rules – Subsequent interpretation of the relevant provision of Union law by the Court of Justice

The Council of State considered that the administrative judge, when faced with a claim that the State is liable for a manifest infringement of Article 3(3) of Regulation No 2988/95, the purpose of which is to confer rights on individuals by reason of the content of a decision of an administrative court that has become final, must investigate whether that decision manifestly disregarded Union law in the light of the factual and legal circumstances applicable on the date of that decision. The high administrative court specified that the fact that this decision was contradicted by the Court of Justice’s subsequent interpretation of the provision in question was irrelevant in this respect.

Conseil d’État, [decision of 9/10/2020, No 414423 \(FR\)](#)



Spain – Constitutional Court

Area of freedom, security and justice – Fundamental rights – Extradition

The Constitutional Court upheld an appeal for violation of the fundamental rights and freedoms of a citizen with dual Spanish and Colombian nationality. This appeal was directed against the orders providing for his extradition to the Republic of Colombia, due to a trial for the commission of computer offences and corruption. The Constitutional Court considered, on the basis of the case-law of the Court of Justice on the European arrest warrant, that the said orders violated the right to effective judicial protection, the obligation to state reasons, as well as the right to a trial with all the guarantees related to the fundamental rights to personal freedom and to the defendant’s freedom of residence and movement. Consequently, the Constitutional Court annulled the orders on the grounds of the absence, on the one hand, of a weighing of the impact that the extradition decision may have on the constitutionally protected content of the extradited person’s right to liberty and, on the other hand, of a review, by a court in the requesting country, of the necessity of the extradition.

*Tribunal Constitucional, [judgment of 19/10/2020, No 147/2020 \(ES\)](#)
[Press release \(ES\)](#)*



Cyprus – Supreme Court

National elections – Filling a vacant parliamentary seat – Constitutional amendments

The Supreme Court ruled that amendments to the Constitution and the National Elections Act were unconstitutional insofar as they retroactively created a legal basis for the deputy of a candidate elected to Parliament, but who had renounced his or her mandate even before taking office, to occupy the seat instead of the latter. The provisions in force at the time of the election did not provide for such a possibility. Applying the basic structure doctrine, the high court considered that the amendments in question undermined the fundamental structure of the Constitution as well as its founding principles, including that of popular sovereignty, and that they violated the principles of separation of powers, non-retroactivity and equal treatment.

Ανώτατο Δικαστήριο Κύπρου, [judgment of 29/10/2020, Μιχαηλίδης κ.α. ν Γενικού Εφόρου Εκλογής κ.α., No 1/2019 \(GR\)](#)



Slovenia – Supreme Court

Social policy – Taking into account periods worked in another Member State

On appeal, the Supreme Court ruled that, in accordance with Article 6 of Regulation No 883/2004, a period of insurance completed under the legislation of another Member State, in this case Austria, must be taken into account for the purposes of acquiring the right to a national social benefit, in the same way as a period completed under Slovenian legislation.

Recalling the Court's case-law on the calculation of insurance periods, namely the judgments of 4 July 2013, *Gardella* ([C-233/12, EU:C:2013:449](#)) and 21 February 2013, *Chassart* ([C-619/11, EU:C:2013:92](#)), the high court emphasised that the European Union constitutes a common area in which the free movement of persons is guaranteed. Failure to take account of periods worked in other Member States would render the purpose of the Regulation meaningless.

Vrhovno sodišče Republike Slovenije, judgment of 27/10/2020, VRSR Sodba VIII Ips 12/2020 (SI)



Belgium – Constitutional Court

Energy – Promoting energy efficiency – Smart meters for electricity and gas

The Constitutional Court examined the constitutionality of the regulations of the three Belgian regions organising the deployment of smart electricity and gas meters, in transposition of several European directives. In this context, the Commission found, *inter alia*, that these regulations are compatible with Regulation 2016/679 (General Data Protection Regulation). Furthermore, it considered that the mandatory installation of a digital meter does not disproportionately affect the right to privacy.

However, it partially annulled the Brussels regulation, as it does not provide for an adequate regime for electrosensitive people and does not allow them to refuse the installation of a smart meter, in violation of the constitutional right to a healthy environment. Furthermore, with regard to the Flemish regulation, it annulled the billing of the installation and commissioning costs of the digital meter to the network user. According to the Constitutional Court, such billing undermines the independence of the energy regulator, which is considered fundamental to achieving a competitive internal energy market.

Cour constitutionnelle, judgment of 12/11/2020, No 144/2020 (FR) (NL) – Press release (FR) (NL)

Cour constitutionnelle, judgment of 17/12/2020, No 162/2020 (FR) (NL) – Press release (FR) (NL)

Grondwettelijk Hof, judgment of 14/1/2021, No 5/2021 (NL) (FR) – Press release (NL) (FR)



Italy – Constitutional Court

Judicial procedure – Exclusion of the accelerated procedure for persons accused of crimes punishable by life imprisonment – Conformity with the Constitution – Need to hold a hearing

The Constitutional Court ruled that a national law that, in the criminal trial of persons accused of crimes punishable by life imprisonment, excludes the accelerated procedure and therefore still requires a public hearing, is in conformity with the Constitution. It is a choice left to the discretion of the legislator, without being unreasonable or arbitrary. More specifically, according to the high court, the requirement to hold a hearing does not violate the accused's rights of defence, while guaranteeing the victim or his or her family members the right to be heard, in accordance with Directive 2012/29/EU. Moreover, as publicity in criminal proceedings is a guarantee of impartiality, there is no right to have the trial conducted *in camera*, even if the accused requests it.

Corte costituzionale, judgment of 3/12/2020, Sentenza n° 260/2020 (IT) Press release (EN)



Austria – Constitutional Court

Fundamental rights – Freedom of religion – National provision prohibiting the wearing of a head covering in elementary schools

With the aim of promoting the social integration of children and equality between women and men, the contested national provision prohibited the wearing of any clothing, including head coverings such as a headscarf, intended to manifest an opinion of a religious or ideological nature.

The Constitutional Court invalidated this provision and found that a rule of law that qualifies a religious belief by discriminating against it must be accompanied by an objective justification in the light of the principle of religious and ideological neutrality. Furthermore, the high court considered that the said rule, which was only aimed at young Muslim girls, stigmatised a certain category of people by socially marginalising them, that it lacked objectivity and did not meet the objective it was supposed to pursue.

Verfassungsgerichtshof, judgment of 11/12/2020, G 4/2020 (DE) Press release (DE)



Netherlands – Council of State

Environment – Conservation of natural habitats – Widening of a motorway

In an interlocutory ruling, the Council of State ordered the Minister for Infrastructure and the Environment to reconsider his decision on the project and to re-assess the possible consequences of it, after 44 appeals had been lodged against a project for the routing of the A15 and A12 motorways, including the connection between these motorways and their widening. Referring in particular to the case-law of the Court of Justice relating to Directive 92/43/EEC, the high court criticised the lack of a sufficient statement of reasons for the decree, expressing doubts as to the completeness of the analysis made by the Minister in relation to the consequences of the project on sites protected by this directive in terms of nitrogen deposits emitted by traffic on the said motorways.

Raad van State, judgment of 20/1/2021, 201702813/1/R3 (NL)
[Press release \(NL\)](#); [summary \(EN\)](#)



Czech Republic – Constitutional Court

Parliamentary elections – Principle of equality in voting

The Constitutional Court partially upheld the appeal to annul certain provisions of the National Electoral Act. Stressing that voters in each electoral district must have the same opportunity to have an impact on the outcome of the elections, the high court ruled that the distribution of mandates according to the D'Hondt key (a proportional calculation system), in combination with the division of the Czech Republic into fourteen electoral districts of different sizes, resulted in a violation of the principle of equality in voting. Furthermore, the Constitutional Court found that, although the minimum electoral threshold of 5% for the entry of a political party into the Chamber of Deputies was in line with the Constitution, the same could not be said for the setting of a higher threshold for coalitions.

Ústavní soud, judgment of 3/2/2021, Pl.ÚS 44/17 (CS)
[Press release \(CS\)](#)



Poland – Supreme Administrative Court

Independence of judges – Judicial reform in Poland – Ludex inhabilis (judge without power) – Right to an effective remedy

On the occasion of an appeal for review on the grounds of invalidity of the proceedings due to the participation of an unauthorised judge in the judgment, the Supreme Administrative Court ruled on the manner in which judges are appointed. It found that the judge concerned was appointed to the voivodship administrative court by the President of the Republic in 2004 and appointed to the Supreme Administrative Court in 2019. In this context, the high administrative court ruled that the appointment of judges by the President of the Republic falls within his personal prerogatives, going beyond a non-binding opinion of the National Council of the Judiciary. Therefore, the Supreme Administrative Court rejected the applicant's arguments that the judgment of 19 November 2019, A. K. and Others (Independence of the Disciplinary Board of the Supreme Court) ([C-585/18](#), [EU:C:2019:982](#)) would be relevant in this case.

Naczelny Sąd Administracyjny, order of 10/3/2021, I GSK 72/21 (PL)/(EN available on request)



Germany – Higher Regional Court of Frankfurt am Main

Bilateral investment treaty – Invalidity of an arbitration clause – Autonomous nature of Union law

The Higher Regional Court of Frankfurt am Main heard a dispute between two banks, established in Croatia and Austria respectively, and the former of those Member States, concerning the referral by those companies to an arbitration tribunal in order to obtain compensation for the damage suffered as a result of a change in legislation that would have been detrimental to their activities on the Croatian financial market. In this decision, the German court held that, having regard to the judgment of 6 March 2018 in Achmea ([C-284/16](#), [EU:C:2018:158](#)), the arbitration clause in the bilateral agreement between Austria and Croatia on the protection of investments concluded on 19 February 1997 was incompatible with Union law. In its view, the Court's ruling should be seen as a decision of principle applicable to all intra-EU investment protection agreements.

Oberlandesgericht Frankfurt a.M., order of 11/2/2021, 26 SchH 2/20 (DE)



Lithuania – Constitutional Court

General principles – Equal treatment – Differential treatment on grounds of age

The Constitutional Court ruled on a regulation applied by a Lithuanian university limiting the right of university professors to continue working beyond the age of 65. The high court ruled that the said regulation was contrary to constitutional principles and, in particular, to the principle of equal treatment. In this judgment, it relied, inter alia, on the relevant provisions of Directive 2000/78 concerning the justification of differences in treatment on grounds of age and on the discretion left by the Court to the national courts to ascertain whether national legislation meets all the requirements justifying the difference in treatment at issue.

Lietuvos Respublikos Konstitucinis Teismas, [judgment of 12/2/2021, KT29-N1/2021 \(LT\)](#)



Bulgaria – Constitutional Court

Traffic offences – Non-payment of fines – Restriction of the freedom of movement of persons and infringement of their property rights

The Constitutional Court of Bulgaria was asked by the National Ombudsman to examine the constitutionality of certain provisions of the Zakon za dvizhenie po patishtata (Road Act) of 5 March 1999, which provide for the temporary withdrawal of a driver's driving licence, the temporary immobilisation of his or her vehicle, as well as restrictions on his or her right to move freely on the national territory and to leave it, in the event of non-payment of fines imposed on him or her for offences committed on national roads.

According to the high court, the sanctions in question are contrary to the rule of law and disproportionate. As the legislator circumvented, inter alia, the procedures for enforcing public debts in respect of fines, he or she restricted, in practice, the constitutional rights of citizens, i.e. their right to move freely within the national territory and to leave it, and seriously undermined the exercise of the right to property.

Конституционен съд, [judgment No 3 of 23/3/2021 \(BG\)](#)