



FLASH NEWS

2/23

NATIONAL DECISIONS OF INTEREST TO THE EU

OVERVIEW OF THE MONTHS FROM DECEMBER 2022 TO MARCH 2023



Portugal – Constitutional Court

Fundamental rights - Mistreatment of pets

The Constitutional Court examined the constitutionality of the law defining the crime of mistreatment of pets. The high court concluded that mistreatment of animals is not explicitly mentioned in the Constitution. Furthermore, the provision defining the crime of mistreatment of pets violates the principle of criminal legality in that many of the concepts used in this provision are imprecise and ambiguous. Consequently, the Constitutional Court declared the provision in question unconstitutional.

Tribunal Constitucional, [judgment of 20/12/2022, No 843/2022 \(PT\)](#)



Latvia – Supreme Court

Res judicata - Judgment of the Court of Justice constituting a new circumstance permitting review of a closed case

The Supreme Court, ruling on an application for review in an administrative case, held that a judgment of the Court of Justice, subsequent to the final judgment of the Supreme Court in the case, did not constitute a new circumstance permitting review of the case under the law on administrative procedures. The high court noted that the new circumstances permitting the review of a closed case, given that they constitute an exception to the principle of *res judicata*, are to be interpreted restrictively. In view of the constant developments in case-law, it would be contrary to the principle of legal stability to revise this closed case, following the judgment of the Court of Justice, which provided a different interpretation of the law.

Latvijas Republikas Senāts, [judgment of 10/1/2023, A420526213, SKA-420/2023 \(LV\)](#)



Slovenia – Supreme Court

Asylum policy - Systemic failings - Inhuman or degrading treatment

The Supreme Court, hearing an appeal relating to the right of asylum and in particular the conditions under which asylum seekers are received, held, relying in particular on the judgments of 21 December 2011, *N.S. and Others*, [C-411/10](#), and *M.E. and Others*, [C-493/10](#), that, as regards the transfer of the applicant, an asylum seeker, to Croatia, which was the Member State responsible, there was no reason to seriously fear systemic failings in the procedure. Such shortcomings would exist where there were no guarantees that the Member State responsible would seriously examine the application submitted and where the applicant would be exposed to inhuman or degrading living conditions within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union.

According to the high court, systemic failures are an objective fact that must be proven by documents from the competent institutions or bodies. In the present case, the Supreme Court found that there were no systemic failings in Croatia with regard to the treatment of asylum seekers and dismissed the applicant's appeal as unfounded and his request for an interim measure as inadmissible.

Vrhovno sodišče Republike Slovenije, [judgment and order of 11/1/2023, VSRS Sodba in sklep I Up 245/2022 \(SI\)](#)





Italy – Council of State

Competition - Cartels - Participation - Proof - Administrative penalties

In a judgment handed down on 20 January 2023, the Council of State ruled on the rules of evidence and on certain aspects of the quantification of penalties for participation in cartels that restrict competition.

In order to establish an anti-competitive agreement, circumstantial evidence is sufficient, provided that the circumstances are serious, precise and concordant in the context of an overall assessment of the evidence obtained. Moreover, it is superfluous, for the purposes of liability, to consider whether the individual participant in the cartel played a more or less important role, whether active or purely passive, since the cartel is also open to challenge in relation to those who merely derive an advantage from it.

With regard to sanctions, even if they are essentially criminal in nature, this does not mean that all the principles of guarantees provided in criminal proceedings automatically apply. In any event, decisions imposing sanctions must indicate the seriousness of the infringement, its duration, the amount of the sanction for each undertaking, any mitigating or aggravating circumstances, the ratio between the amount of the sanction and the undertaking's total turnover, and any other quantification criterion used, this quantification being an expression of the discretionary power of the national competition authority.

Consiglio di Stato, [judgment of 20/1/2023, No 690 \(IT\)](#)



Austria – Administrative Court

Right to education - Correspondence schooling abroad - Concept of 'attending a school'

In Austria, children subject to compulsory schooling who do not have Austrian nationality may fulfil this obligation without authorisation by attending a school abroad, provided that the Austrian authorities are notified in advance of such attendance.

However, in this case, the Administrative Court ruled that the obligation for children who do not have Austrian nationality is not fulfilled when the foreign school is only attended by correspondence, as was the case here. The high court noted that attendance at a school can only be qualified as such when children receive a communal education together.

*Verwaltungsgerichtshof, [judgment of 24/1/2023, Ra 2021/10/0123](#)
[Press release \(DE\)](#)*



Spain – Supreme Court

Social policy - Collective redundancies

In the context of collective redundancies, the Supreme Court ruled that there is no discrimination on the grounds of age if a collective bargaining agreement provides for lower compensation for people aged 60 or over than for other workers. In the present case, the agreement provided for compensation for all those concerned, making a distinction between those under and those over 60. The high court ruled that the disputed agreement did not contain discrimination on grounds of age because, on the one hand, the amount of the compensation exceeded the applicable legal minimum and even included various corrective factors favourable to workers receiving a lower salary and, on the other hand, because there was an objective, reasonable and proportionate justification for this difference in treatment, since workers over 60 years of age were closer to retirement and could enter into an individual agreement.

Tribunal Supremo, [judgment of 24/1/2023, No 62/2023 \(ES\)](#)



Estonia – Supreme Court

Freedom of expression - Press - Penalties for disclosing facts during an investigation in progress

The Supreme Court upheld the order of the Court of Appeal that was the subject of the appeal brought before it, which had overturned a decision of the Court of First Instance imposing a fine of 1,000 euros on two journalists and a media portal. The fine related to the publication of a press article entitled 'The entire former management of Estonia's Swedbank was suspected of money laundering in connection with a Russian oligarch', as well as the disclosure of information in the context of ongoing criminal proceedings. The Supreme Court found that there was a legitimate public interest in the publication of the article in this case of alleged money laundering.

Riigikohus, [order of 31/1/2023, No 1-22-1949 \(ET\)](#)



Hungary – Supreme Court

Protection of personal data - Private email address

As a result of the defendant's registration of an incorrect email address in the commercial register, which was very similar to the applicant's email address, the applicant received unwanted messages for 5 years. The Supreme Court, ruling on an appeal for review, found that the private email address, which contained the full name of the individual concerned, constitutes personal data within the meaning of Article 4(1) of Regulation (EU) 2016/679. However, it rejected the applicant's claim for compensation for non-pecuniary damage. It concluded that the unlawful processing of personal data does not automatically, in itself and in the absence of other elements, constitute an infringement of the right of personality relating to the protection of personal data under the Civil Code.

Kúria, [judgment of 1/2/2023, Pfv.IV.20.730/2022/7 \(HU\)](#)



France – Council of State

State aid - Electricity - Regulated access to historical nuclear electricity (ARENH)

Following a referral from EDF and employee and shareholder organisations, the Council of State ruled that the government's decision to increase the volume of electricity sold by EDF to its competitors in 2022 under the regulated access to historical nuclear electricity (ARENH) was legal. In particular, it considered that, by requiring EDF to sell part of the electricity produced by French nuclear plants and thus offering alternative suppliers the possibility of reducing their electricity supply costs, thereby encouraging the development of competition on the electricity market, the ARENH should be regarded as a mechanism for rebalancing the costs between operators on the French electricity market in order to encourage competition, and could not constitute State aid within the meaning of Article 107(1) TFEU.

Conseil d'État, [decision of 3/2/2023, No 462840 \(FR\)](#)



Belgium – Court of Cassation

Criminal law - Privacy - Compulsory confiscation of a computer system

The Court of Cassation ruled that a defendant has the right to demand the return of a confiscated computer system if it contains his or her personal or professional data. The confiscation of an entire computer system or digital data medium may result in the loss of data stored on that system or medium, thereby affecting the defendant's right to privacy or property rights.

According to the high court, the data subject must demonstrate the personal or professional nature of his or her data and expressly request the return of his or her files, to which he or she cannot have access without such return. In addition, the accused must indicate the exact location of his or her data in the computer system and provide a medium onto which it can be copied. It must be technically possible to copy the requested data and not represent a disproportionate workload.

Cour de cassation, [judgment of 7/2/2023, No P.22.1492.N \(NL\)](#)



Netherlands – Council of State

Immigration policy - Family reunification

The Council of State was called upon to rule on the legality of a measure stipulating that family members of a person with a residence permit for asylum purposes must wait a further 6 months after their application for family reunification has been accepted before they can come to the Netherlands.

The Council of State ruled that the right to family reunification, which includes the right to enter and reside in the Netherlands, cannot be isolated from the possibility of exercising it effectively. Consequently, the high court ruled that the measure in question was contrary to Articles 12 and 13 of Directive 2004/81/EC on family reunification. However, it found that the shortcomings in the reception of asylum seekers were not so serious as to violate Article 3 of the ECHR or Article 4 of the Charter of Fundamental Rights of the European Union. This particularly high threshold of seriousness is only reached when a person is in a situation of extreme material deprivation, which was not the case here.

*Raad van State, decisions of 8/2/2023, [202207360/1/V1](#), [202207400/1/V1 \(NL\)](#) and [202207496/1/V1 \(NL\)](#)
[Press release \(NL\)](#)*



Lithuania – Supreme Administrative Court

Environment - Directive (EU) 2018/2001 - Promotion of energy from renewable sources

The Supreme Administrative Court upheld the legality of the decree, adopted by the Minister for Energy, establishing the methodology for calculating the share of renewable energy sources, applicable in particular in the transport sector.

It clarified the wide margin for manoeuvre available to the Minister for Energy in order to implement Directive (EU) 2018/2001 and achieve the objectives set by national legislation. These objectives involve reducing the impact of the transport sector on climate change and ambient air pollution.

*Lietuvos vyriausiosios administracinės teismas, [judgment of 9/2/2023, I-8-520/2022 \(LT\)](#)
[Press release \(LT\)](#)*



Finland – Supreme Administrative Court

Consumer protection - Foodstuffs - Designations used in the promotion and marketing of purely plant-based foods - Plant-based meat

The term ‘meat’, as defined in EU legislation, refers to parts of animals that are exclusively fit for human consumption. The term ‘plant meat’, on the other hand, does not appear in any EU regulations (see Regulation (EC) No 178/2002 and Regulation (EU) No 1169/2011) or national legislation.

The Supreme Administrative Court found that the question of whether information provided about a foodstuff is misleading must be assessed in accordance with the principles arising from the judgment of 4 June 2015, Bundesverband der Verbraucherzentralen und Verbraucherverbände, [C-195/14](#).

Labelling with the expression ‘Muu Kasvilihapulla’ [translated as ‘vegetarian meatball’] conflicts with EU regulations restricting the use of the term ‘meat’. Such use may give the impression to the average consumer that it is a meatball into which a plant-based component has been incorporated, even though in reality it is a purely plant-based food. Consequently, this labelling and the marketing of this product may mislead the consumer.

On the other hand, the labelling of the product ‘Muu Burgerpihvi’ [translated as ‘minced meat burger’], including the expression ‘burgerpihvi’ [translated as ‘hamburger patty’] does not conflict with EU legislation. In the present case, the average consumer was unlikely to perceive this term as referring to a product containing only meat. Therefore, the labelling in question could not be considered misleading for the consumer.

It should be noted that the expression ‘Muu’ in Finnish refers to the onomatopoeia imitating the mooing of a cow (‘moo’), a further connotation of the animal origin.

Korkein hallinto-oikeus, [decision of 13/2/2023, KHO:2023:16 \(FI\) \(SV\)](#)



Cyprus – Supreme Court

Protection of personal data - General and undifferentiated retention of IP addresses

The Supreme Court ruled that the law on the retention of telecommunications data for the purposes of investigating serious criminal offences was not contrary to the Directive on privacy and electronic communications or to the principles derived from the case-law of the Court of Justice.

Although this law provides for the general and indiscriminate retention of IP addresses for the purposes of combating serious crime, the high court took into consideration the fact that said data retention is for a limited period of 6 months and is framed by clear and precise rules, guaranteeing that it is subject to compliance with the relevant legal conditions and ensuring the protection of the data in question against possible risks of abuse.

Ανώτατο Δικαστήριο Κύπρου, [judgment of 14/2/2023, Αναφορικά με την αίτηση του Ν.Μ. για την έκδοση εντάλματος certiorari, No 124/2022 \(GR\)](#)



Poland – Supreme Administrative Court

Judicial reform - Independence and impartiality of judges - Mechanism for verifying judges’ status

The Supreme Administrative Court was asked to verify that the requirements of independence and impartiality of a judge of the same court had been met, as the judge had been appointed to the post by the National Council of the Judiciary, which was set up following the recent judicial reform.

The Supreme Administrative Court declared the application admissible, but subsequently rejected it. In this respect, it specified that the examination of whether an administrative judge meets the requirements of independence and impartiality must be carried out taking into account the circumstances surrounding his or her appointment and his or her conduct after such appointment. In this case, the high court found that the appointment of the judge in question to the position of Supreme Administrative Court judge was a natural consequence of the fact that he had been a judge of a regional administrative court for many years. This judge could not be reproached for the fact that the proposal to appoint him to the post of judge at the Supreme Administrative Court had, in practice, for reasons beyond his control, to be made by the National Council of the Judiciary.

Naczelny Sąd Administracyjny, [order of 14/2/2023, I FSK 2040/22 \(PL\)](#)



Romania – Constitutional Court

Nationality - Acquisition of Romanian nationality

In the context of the law amending the Romanian nationality law, the Constitutional Court declared unconstitutional the provision aimed, in the context of the increased mobility of people, at introducing a new case for acquiring Romanian nationality. More specifically, according to this provision, a foreign citizen married to a Romanian citizen could acquire Romanian nationality if they had lived together abroad for at least 10 years from the date of marriage. In this respect, the Constitutional Court noted that the law did not provide sufficient reference points to allow the competent authorities to calculate the 10-year period. It considered that this provision lacked clarity and predictability, insofar as it was not clear from it whether or not this period could be interrupted.

Curtea Constituțională, [decision of 15/2/2023, No 17 \(RO\)](#)



Estonia – Supreme Court

Freedom of expression - Right to receive information - Internet access by a prisoner

The Supreme Court declared unconstitutional a provision of the law on detention in that it excluded the right of a prisoner serving a fixed prison sentence to access, in particular, the part of the Supreme Court's website that did not contain the Court's decisions, on the grounds that it violated the constitutional right to freedom of access to information, enshrined in Article 44 of the Constitution, interpreted in the light of Article 10 of the ECHR. A dissenting opinion is appended to the Supreme Court's judgment, which emphasises the wide margin for manoeuvre available to the legislator in providing access to websites in prison.

It should be noted that, in a judgment of 7 December 2009, the high court found that the same provision was not contrary to the Constitution insofar as it excluded prisoners' access to the website of Parliament and the website of the Chancellor of Justice. In 2016, in the case of [Kalda v Estonia](#), which dealt with the same issue, the European Court of Human Rights found that Estonia had violated the principle of freedom of expression.

Riigikohus, [judgment of 15/2/2023, No 3-18-477 \(ET\)](#)



Germany – Federal Constitutional Court

Fundamental rights - Analysis and automatic processing of data

The Federal Constitutional Court ruled on two *Land* provisions relating to public security and public order, as well as data processing, declaring the first incompatible with the Basic Law and invalidating the second. These provisions would have violated the 'right to self-determination with regard to information', guaranteed by the Basic Law, in an unjustified manner by allowing the automatic analysis and processing of data.

In this respect, the Federal Constitutional Court took account of the specific seriousness of the measure linked to such analysis and automatic processing of data, given that the use of the data obtained by such processing, which resembled 'profiling', could lead to specific charges being brought against the persons concerned. The constitutional requirements relating to the justification of such processing in the light of the principle of proportionality vary and must correspond to the intensity of the harm. Inasmuch as there is a serious infringement of 'self-determination with regard to information', processing is justified only if strict requirements with regard to secret surveillance measures are met.

In the present case, the provisions at issue would allow very serious infringements of fundamental rights, without providing for adequate limitations.

Bundesverfassungsgericht, [judgment of 16/2/2023, 1 BvR 1547/19, 1 BvR 2634/20 \(DE\)](#)
[Press release \(DE\)/\(EN\)](#)



Latvia – Supreme Court

Social policy - Equal treatment - Distinction between discrimination and harassment

The case was brought before the Supreme Court by an employee against his former employer following his allegedly unlawful dismissal. The high court clarified the difference between discrimination and harassment, namely that, although both cases involve the differential treatment of one worker compared with others, in the case of harassment it is not necessary to specify a reason provided for by law. However, the provision of the law on employment concerning compensation for non-material damage in the event of discrimination applies, by analogy, in the case of harassment.

Latvijas Republikas Senāts, [judgment of 16/2/2023, C30604219, SKC-28/2023 \(LV\)](#)



Latvia – Supreme Court

Right to a fair trial - COVID-19 - Right to attend the trial

In this case, the Supreme Court was called upon to rule on an appeal in cassation in which a lawyer sought the annulment of the Court of Appeal's decision convicting his client of having committed several crimes. The high court quashed this ruling, in particular upholding the lawyer's argument that his client's right to a fair trial had been violated. The Court of Appeal, which had ruled on the basis of a purely written procedure and rejected the lawyer's request to organise an oral hearing during the COVID-19 epidemic, should have given reasons for its refusal to organise such an oral hearing, given that the health measures in force permitted it.

Latvijas Republikas Senāts, [judgment of 21/2/2023, 16870001618, SKK-6/2023 \(LV\)](#)



Lithuania – Supreme Court

Customs Union - Concept of 'customs debt'

The Supreme Court ruled that the concept of 'customs debt' cannot be interpreted broadly under Regulation (EEC) No 2913/92 or Regulation (EU) No 952/2013. More specifically, relying on the relevant case-law of the Court of Justice, the Lithuanian high court found that the customs debt does not include value added tax or excise duties, as these two categories of tax do not constitute customs duties. In addition, it specified that the provisions of the EU Customs Code laying down the conditions leading to the extinction of the customs debt do not apply in the context of criminal proceedings concerning the smuggling of goods seized after they have left the customs control area.

Lietuvos Aukščiausiasis Teismas, [judgment of 23/2/2023, 2K-7-37-648/20233 \(LT\)](#)



Spain – Supreme Court

Social policy - Single-parent families - Supplementary benefits

The Supreme Court was asked to rule on an appeal lodged by the Public Prosecutor's Office concerning the request of a single mother heading a single-parent family to receive double the benefit granted for the birth of a child. The high court rejected the claim, ruling that the configuration of the social security benefits system is a matter exclusively for the legislator, who had recently rejected an amendment in the Senate aimed at introducing a legal change along the same lines. In addition, it is up to the legislator to weigh up the various interests at stake, including those of the child and the parent, and then decide on the most appropriate solution in this respect.

Tribunal Supremo, [judgment of 2/3/2023, No 169/2023 \(ES\)](#)



Romania – Constitutional Court

Legal proceedings - Extraordinary action for annulment

The Constitutional Court rejected the plea of unconstitutionality brought before it. This had been raised against the provision of the Code of Civil Procedure excluding the possibility of lodging an extraordinary action for annulment against final decisions of courts ruling on appeal that are not subject to appeal, when the latter have not examined in good time one of the grounds for annulment raised.

On the one hand, the high court specified that the legislator is sovereign in regulating access to an extraordinary means of recourse that, by definition, is an exception and can only be exercised in the cases expressly and exhaustively provided for by the law. Thus, the fact that it is not possible to bring an extraordinary action for annulment because the appeal court failed to analyse a plea for annulment is a natural consequence of the ordinary and devolutive nature of the appeal, and does not infringe the principle of equality before the law and free access to justice. On the other hand, the Constitutional Court considered that such a limitation constitutes a guarantee of the right of every person to have his or her case dealt with fairly and within a reasonable time.

Curtea Constituțională, decision published on 13/3/2023, No 417 (RO) [the link to the text of the judgment is not available]



Portugal – Constitutional Court

Public health - COVID-19 - Containment measures

Following an appeal for unconstitutionality lodged by the Public Prosecutor's Office, the Constitutional Court ruled that the criminal provision imposing compulsory quarantine at home on citizens whose active surveillance had been ordered by a health authority or other health professional was unconstitutional. The Constitutional Court ruled that this provision violated the principle of exclusive parliamentary competence and the principle of legal restriction of rights and freedoms, as enshrined in the Constitution, stating that only laws passed by Parliament may regulate certain matters and restrict constitutional rights and freedoms.

Tribunal Constitucional, [judgment of 14/3/2023, No 74/2023 \(PT\)](#)



Bulgaria – Supreme Court of Cassation

Social policy - Organisation of working time

Acting on a referral from the Minister of Justice, the Supreme Court of Cassation issued an interpreting judgment on the determination of remuneration for night work performed by employees of the Ministry of the Interior.

According to this court, neither the rules of the Bulgarian Labour Code nor the special coefficient of 1.43 by which hours worked are multiplied in the private sector apply to night work by employees of the Ministry of the Interior. As a result, unlike employees in the private sector, police officers are authorised to work 8 hours instead of 7 during the night, and the special coefficient, which applied until 2016, no longer applies to them.

This judgment is in line with the case-law of the Court, in particular the judgment of 24 February 2022, *Glavna direksia 'Pozharna bezопасnost i zashtita na naselenieto'*, [C-262/20](#), according to which, Articles 20 and 31 of the Charter of Fundamental Rights of the European Union do not preclude the normal length of night work set at 7 hours for private-sector employees from not applying to public-sector employees, in particular police officers and firefighters, if such a difference in treatment is based on an objective and reasonable criterion.

Върховен касационен съд (Varhoven kasatsionen sad), [interpreting judgment of 15/3/2023, No 1/2020 \(BG\)](#)



Denmark – Supreme Court

Asylum policy - Loss of Danish nationality

The Supreme Court annulled the decision of the Ministry of Immigration and Integration to deprive a Danish national, A, of her nationality. A was born in Denmark and acquired Danish and Iranian nationality at birth because of her father's dual nationality. At the age of 20, she left Denmark voluntarily and moved to Syria to join the Islamic State. She married a member of the Islamic State, had children with him and remained in an area controlled by the Islamic State until her capture in March 2019.

The high court ruled, among other things, that the right to citizenship should not be withdrawn if the person in question has no connection, or only a very weak connection, with another country. A has not lived in Iran, spent any length of time in Iran or had any contact with relatives in Iran, nor does she speak Farsi, which is the official language of Iran. The Supreme Court therefore concluded that A had only a very weak link with Iran and ruled that the Ministry's decision did not satisfy the requirement of proportionality. The decision was therefore annulled.

Højesteret, [judgment of 22/3/2023, Sag BS-23360/2022-HJR \(DK\)](#)



Estonia – Supreme Court

Consumer protection - Termination of a bank account

The Supreme Court ruled that Swedbank had unlawfully terminated a current account agreement with a payment card, in existence since 1998, entered into with a natural person. The Supreme Court ruled that Directive 2014/92/EU does not explicitly distinguish between ordinary and extraordinary termination. However, it held that national law must be interpreted in accordance with Recital 47 and Article 19(2) and (3) of that Directive as meaning that a credit institution may not terminate a payment services agreement concluded with a consumer on an ordinary basis if that agreement meets the characteristics of a basic payment services agreement.

Riigikohus, [judgment of 22/3/2023, No 2-21-3552 \(ET\)](#)



Luxembourg – Administrative Court

Plant protection products - Glyphosate (chemical herbicide) - Ban

Luxembourg was the first EU country to ban glyphosate, following a political agreement reached by the governing coalition in 2018. On 1 February 2020, Luxembourg withdrew the marketing authorisation for glyphosate-based plant protection products, while tolerating the disposal of existing stocks, before completely banning their use on Luxembourg soil from 1 January 2021. This ban was invalidated on 30 March last by a decision handed down on appeal by the Administrative Court.

This court upheld the Administrative Court's decision to revoke the marketing authorisations for eight plant protection products containing the active substance glyphosate. The judges emphasised the 'absence of any indication of the slightest legal argument' on the part of the Luxembourg State for banning the products concerned.

As a result of this decision, the authorisations for the plant protection products in question are reinstated with effect from the date on which the judgment was handed down. In the EU, glyphosate is currently authorised until 15 December 2023. This authorisation may be extended.

Cour administrative, [judgment of 30/3/2023, No 47873 C \(FR\)](#)



Sweden – Supreme Court

Judicial cooperation - European arrest warrant - Refusal to execute

The Supreme Court ruled that a citizen of another Member State of the European Union must be treated in the same way as a Swedish citizen for the purposes of refusing to execute a European arrest warrant based on a national rule relating to the limitation of criminal proceedings or sentences under the legislation of the Member State of execution. Consequently, that limitation rule, laid down in the national law transposing the Council Framework Decision (2002/584/JHA), is applicable to citizens of the European Union other than Swedish citizens.

In this case, Poland had issued an arrest warrant for a Polish citizen residing in Sweden. The warrant was for the surrender by Sweden of the said citizen to Poland for criminal prosecution.

The Court of First Instance ruled that this Polish citizen should be handed over on condition that any sentence he might receive would be served in Sweden. The citizen appealed to the Court of Appeal and then to the Supreme Court, which upheld his appeal.

Högsta domstolen, [judgment of 4/4/2023, No Ö 8346-22 \(SV\)](#)
[Press release \(SV\)](#)

Previous decisions



Portugal – Constitutional Court

Fundamental rights - Rights of the defence - Secrecy of criminal proceedings

The Constitutional Court validated a provision of criminal procedure under which the representative of the Public Prosecutor's Office is authorised to apply investigative secrecy in a case without first hearing the accused. The high court ruled that this decision did not violate the accused's rights, including his right to a defence. In this respect, the Constitutional Court stressed that investigative secrecy is a necessary measure to protect the interests of the trial and its outcome. Although the accused does not have access to all the information relating to the trial, this does not mean that he is totally deprived of it, especially at times during the trial when the information is relevant to him.

Tribunal Constitucional, [judgment of 18/10/2022, No 653/2022 \(PT\)](#)



Ireland – Supreme Court

Environment - Right to appeal against an authorisation decision - Requirement of a procedure at a non-prohibitive cost

In the presence of significant national case-law on environmental law and with reference to the case-law of the Court of Justice, in particular the judgment of 15 March 2018, North East Pylon Pressure Campaign and Sheehy, [C-470/16](#), the Supreme Court decided that the entirety of the pleas put forward by the applicant in his appeal against a decision granting permission for a residential development fell within the concept of a 'procedure at a non-prohibitive cost', provided for by the Irish law transposing the European regulations in this area. Consequently, it ruled that the applicant did not have to pay legal costs, since at least one of his pleas was based on environmental law.

Supreme Court, [judgment of 10/11/2022, \[2022\] IESC 43 \(EN\)](#)