



FLASH NEWS

3/23

NATIONAL DECISIONS OF INTEREST TO THE EU

OVERVIEW OF THE MONTHS OF APRIL TO THE END OF SEPTEMBER 2023



Poland – Białystok Regional Court

Immigration policy – Cracking down on the facilitation of unauthorised entry, transit and residence – Humanitarian aid

Białystok Regional Court was hearing an appeal in the criminal proceedings against A., an Iraqi national who had been living in Germany for several years, and who was charged with facilitating unauthorised entry and residence.

In actual fact, in 2021, A. had allegedly received a request for help from members of his family who were in the forest near the border with Belarus, without food or water. After recovering them, he was arrested by the Polish border guards.

By judgment of 3 April 2023, Białystok Regional Court upheld the decision of first instance acquitting A., finding that the factual circumstances of the case left no doubt as to A.'s motivation. He had not acted in order to obtain financial benefits for transporting foreigners, but was motivated by a need to help members of his family, including children. This motivation therefore had to be considered humanitarian. In addition, the Court emphasised that the evidence gathered had shown that this assistance was necessary to protect the health and life of the children concerned.

Sąd Okręgowy w Białymstoku, judgment of 3/4/2023, VIII Ka 921/22 (PL) [the link to the text of the judgment is not available]



Belgium – Constitutional Court

Environment – Right to appeal against an administrative decision – Access to the courts

To speed up proceedings before two courts with jurisdiction in environmental matters, the Flemish legislator provided that a breach of a rule could only result in the annulment of the contested administrative act if that rule was such as to protect the interests of the party relying on it (condition of relativity) and if that party had clearly not failed to invoke that illegality during the administrative procedure (duty of care).

The Constitutional Court ruled that these conditions violated the right of access to the courts and the right to protection of a healthy environment. However, those rights were not infringed by the condition of relativity, provided that it was interpreted in accordance with Union law on access to justice in environmental matters.

Grondwettelijk Hof, judgment of 11/4/2023, No 59/2023 (FR)/(NL)

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



Slovenia – Supreme Court

Free movement of workers – Taxable income – Tax allowance

On appeal, the Supreme Court held, having regard to the primacy of Union law and Article 45 TFEU, that a taxpayer resident in a Member State other than Slovenia who derives all of his income from work in Slovenia is entitled to a tax allowance for dependants in that State.

In this case, the resident concerned had generated all of his taxable income in Slovenia, so that he was in a situation objectively comparable with that of a Slovenian resident. However, the Slovenian tax authorities excluded him from the tax allowance for dependants on the grounds that it was reserved for taxpayers resident in Slovenia. As a result, the amount of tax applicable was higher than that of Slovenian resident taxpayers in an objectively comparable situation.

Vrhovno sodišče Republike Slovenije, judgment of 12/4/2023, VSRS Sodba X Ips 20/2022 (SI)

Slovenia – Supreme Court

Consumer protection - Loan agreement denominated in a foreign currency – Concept of good faith

On appeal, the Supreme Court recalled that the concept of good faith, within the meaning of Directive 93/13/EEC, implies that a bank must inform the borrower in a sufficiently clear manner of the characteristics of the main subject matter of the agreement. In this case, however, the borrower had not been clearly informed that, by entering into the loan agreement in question, which was denominated in a foreign currency, he was exposing himself to a foreign exchange risk that would be financially disadvantageous to him in the event of a depreciation of the currency in which he received his income.

As a result, the Supreme Court dismissed the appeal for review lodged by the bank.

Vrhovno sodišče Republike Slovenije, [judgment of 19/4/2023, VSRS Sodba II Ips 8/2022 \(SI\)](#)

Netherlands – Council of State

Asylum policy - Dublin III Regulation - Principle of mutual trust

In its decisions, the Council of State ruled that two third-country nationals could not be transferred to Italy, the country responsible for processing their applications for international protection on the basis of the Dublin III Regulation.

In this case, information received from the Italian authorities showed that there was a shortage of reception facilities in Italy due to the large numbers of migrants. Consequently, in the opinion of the Council of State, there was a real risk that foreign nationals would find themselves, irrespective of their will and personal choices, in situations of extreme material deprivation, which would not enable them to meet their most basic needs, such as those referred to in the Court's judgment in Case C-163/17.

It therefore found that the Secretary of State could not, in these circumstances, rely on the principle of mutual trust with regard to Italy.

*Raad van State, decisions of 26/4/2023, [202207368/1/V1](#) and [202300521/1/V1 \(NL\)](#)
[Press releases \(NL\) \(EN\)](#)*

Latvia – Constitutional Court

Right to a fair trial - Presumption of innocence – Repeated breaches of tax provisions

At the request of the Supreme Court (Senate), the Constitutional Court ruled that a provision of the law on taxes was contrary to the presumption of innocence enshrined in Article 92 of the Constitution. The Senate had made such a request in the context of a dispute in which a legal entity had been fined by the tax authorities, on the basis of that legal provision, for having committed a repeated offence. The provision in question provides that a taxable person has committed a repeated tax offence even if the legal proceedings concerning the previous offence are still in progress. The Constitutional Court noted that the presumption of innocence was applicable in cases concerning sanctions adopted for repeated breaches of tax provisions.

Latvijas Republikas Satvesmes tiesa, [judgment of 3/5/2023, 2022-22-01 \(LV\)](#)

Ireland – Supreme Court

Citizenship – Application for citizenship based on the citizenship of the non-natural parent

This case concerns a child born as a result of surrogate motherhood in England to an Irish-British same-sex couple. The Court considered whether the application for Irish nationality for the child could be based on the Irish nationality of his non-natural father.

Allowing the Minister's appeal, the Court refused the application for nationality for the child. On the basis of the applicable Irish law, which refers specifically to 'the parent at the time of the child's birth', the Court found that the non-natural parent was not the child's parent at the time of birth. However, the Court acknowledged that, had the defendant raised the constitutionality of this law, a different conclusion would probably have been reached, since the practical effects of this law discriminate against same-sex couples.

Supreme Court, judgment of [9/5/2023 \[2023\] IESC 10 \(EN\)](#)

Italy – Court of Cassation

European Union trade mark – Shape of a box of chocolates

In a dispute concerning the shape of a box of chocolates manufactured by a Czech company, after clarifying the concepts of substantial shape and necessary shape, the Court of Cassation confirmed that the Czech company had engaged in unfair competition in relation to the shape of a box belonging to the company Ferrero.

In the light of the case-law of the Court of Justice, according to which a sign representing the shape of a product is one of the signs capable of constituting a trade mark, provided that it is capable of being represented graphically and is also capable of distinguishing the product or service of one undertaking from those of other undertakings, the Court of Cassation dismissed the appeal brought by the Czech company. This decision was taken in particular in view of the external characteristics of the Ferrero box, which have an individualising effect and are capable of linking this product to said company.

Corte di Cassazione, [order of 11/5/2023, No 12881 \(IT\)](#)



Lithuania – Supreme Court

Fundamental rights – Ne bis in idem principle – Conditions of application – Combination of criminal and administrative penalties

On appeal in criminal proceedings against a person who had committed a VAT offence, the Supreme Court upheld the appellate court's finding that the principle of ne bis in idem had been breached in this case.

The high court was led to apply a combined, balanced and simultaneous set of criteria arising from the case-law of the European Court of Human Rights and the Court of Justice, making it possible to incur both administrative and criminal liability for the same acts. However, it ruled that the cumulation of proceedings was not justified, especially as, in this case, the criminal proceedings and the administrative infringement proceedings were spaced out in time.

Lietuvos Aukščiausiasis Teismas, judgment [of 16/5/2023, 2K-140-387/2023 \(LT\)](#)



Romania – High Court of Cassation and Justice

Judicial cooperation in criminal matters – Enforcement of financial penalties by the authorities of the Member States – Limitation period

In an action brought in the interest of the law, the Supreme Court ruled on the calculation of the limitation period for the enforcement of pecuniary penalties representing criminal or administrative fines imposed by the authorities of the Member States of the European Union and recognised by a decision of the Romanian courts. It ruled that the legal basis applicable to the calculation of said limitation period is either the provision of the Criminal Code or the provision of the Code of Tax Procedure, depending on the nature of the penalty. In addition, the Supreme Court added that the date from which the limitation period for the enforcement of those financial penalties begins to run is the date on which the decision handed down by the authorities of the Member States becomes final.

Înalta Curte de Justiție și Casație, [decision of 29/5/2023, No 8 \(RO\)](#)



Finland – Supreme Administrative Court

Environmental protection – Annual climate report – Possibility of appealing against an administrative decision – Failure of the authority to act

The Government submitted its annual climate report to Parliament, as required by the Climate Act.

The applicants applied to the Supreme Administrative Court to have the Government's decision to submit said annual report to Parliament annulled and to have Parliament submit a new version of the report. This report did not present the required assessment of the additional measures needed to achieve greenhouse gas emission reduction targets. According to the applicants, the Government had remained passive in the face of the decision, which was not in conformity with the Act, with the result that the protection of the applicants' fundamental rights required the possibility of lodging an appeal, even though no specific administrative decision had been taken in that regard.

The Supreme Administrative Court declared the appeal inadmissible by three votes to two, on the grounds that the decision was not subject to appeal.

The minority, for its part, relied on the 'European Climate Law' (Regulation (EU) 2021/1119) and the 'LULUCF Regulation' (Regulation (EU) 2018/841, which sets out what Member States must do to ensure that land use, land-use change and forestry (LULUCF) contribute to achieving the EU's greenhouse gas emissions reduction target for the period 2021-2030).

The minority argued that a State governed by the rule of law must have mechanisms enabling the courts to review the legality of actions relating to the protection of people's fundamental rights, such as the right to a healthy and dignified environment. The Government's report contains a statement to the effect that there is currently no need for further climate measures. However, such a declaration should be subject to judicial review.

*Korkein hallinto-oikeus, [decision of 7/6/2023, ECLI:FI:KHO:2023:62 \(FI\)/\(SV\)](#)
[Press release \(EN\)](#)*



Italy – Court of Cassation

Taxation – Professional income tax returns – Lawyers

By order of 12 June 2023, the Court of Cassation excluded lawyers registered with the bar in their country of origin and affiliated to the social security funds of other Member States, but also registered with the Italian bar, from the obligation to send their professional income tax returns to the Italian lawyers' social security fund.

In this respect, the national high court specified that this obligation depended not only on registration with the national bar, but also on registration with the corresponding social security fund. An interpretation to the contrary would constitute discrimination on grounds of nationality and infringe the freedom of establishment. The Court of Cassation thus dismissed the appeal lodged by the Italian lawyers' social security fund.

Corte di Cassazione, order of 12/6/2023, No 16589 (IT) [the link to the text of the judgment is not available]

Cyprus – Supreme Court

Taxation – VAT – Amending law temporarily suspending the obligation to pay excise duty on petroleum products – Breach of the principle of the separation of powers

Following a referral from the President of the Republic, the Supreme Court declared an amending law suspending the obligation to pay excise duty on petroleum products until 31 December 2022 to be unconstitutional. According to the Supreme Court, the law in question was contrary to the principle of the separation of powers, since the question of modifying VAT revenues falls within the competence of the Executive, which is responsible for defining and conducting economic and budgetary policy in accordance, in particular, with the commitments of the Republic of Cyprus as a Member State of the European Union.

Ανώτατο Δικαστήριο Κύπρου, [opinion of 12/6/2023, No 1/2022 \(GR\)](#)

Spain – Supreme Court

Competition – Cartels – Article 101 TFEU – Actions for damages

Following the publication of the summary of a Commission decision of 19 July 2016 (‘the decision’), recognising a series of facts constituting infringements of Article 101 TFEU by five lorry manufacturers and 10 subsidiaries of some of them, thousands of ‘follow-on’ actions (consecutive civil actions) were brought in Spain on the basis of said decision.

Ruling on 15 appeals in cassation concerning claims for damages resulting from the conduct sanctioned by this decision, the Supreme Court upheld the appeals of hauliers who had paid additional costs arising from the agreements concluded between six major lorry manufacturers, confirming that the purpose of these agreements was to fix prices and increase gross prices in the European Economic Area. As a result, the high court ruled that the hauliers should be compensated for 5% of the price of the vehicles, plus interest.

[Tribunal Supremo, judgments of 12/6/2023 No 923/2023 to 950/2023 \(ES\)](#)

Belgium – Constitutional Court

Package travel – Protection against insolvency – Obligation of the organiser to provide security

The Constitutional Court ruled on the scope of the obligation for package travel retailers to provide a guarantee to apply in the event that they become insolvent, provided for by Belgian law transposing Directive (EU) 2015/2302 on package travel and related travel services.

On the basis of the Directive, the Constitutional Court held that this obligation applies both to retailers that conclude package travel contracts with travellers in their own name and on their own behalf and to retailers that act exclusively on behalf of an organiser-commissioner as commercial agents and therefore at most enter into commitments in the name and on behalf of the latter.

[Grondwettelijk Hof, judgment of 22/6/2023, No 101/2023 \(FR\)/\(NL\)](#)

Ireland – Court of Appeal

Family law – Abduction

The Court of Appeal, hearing an appeal against a decision of the High Court, did not consider it appropriate to refer to the Court of Justice for a preliminary ruling questions concerning the alleged abduction of a child under the age of 16 by his mother (the applicant) from his habitual residence in a Member State.

The applicant challenged the High Court’s judgment ordering the return of the child in accordance with the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the relevant European regulations. She argued that there was a discrepancy between freedom of movement and the right to a fair trial on the one hand, and the international and European rules governing abduction on the other.

The Court of Appeal dismissed the appeal on the grounds that it was based on facts already established at first instance. With regard to the questions referred for a preliminary ruling, it held that the action did not raise any question as to the validity or interpretation of an act of the European Union.

[Supreme Court, judgment of 19/6/2023, \[2023\] IECA 158 \(EN\)](#)

Cyprus – Supreme Court

Access to employment in the private sector for former judges and civil servants - Access subject to certain conditions - Eligibility

In its opinion of 27 June 2023, the Supreme Court concluded that a law requiring retired judges, former attorneys general and their deputies to declare to a special committee their intention to take up a post in the private sector within 2 years of their retirement or at the end of their term of office or service, as the case may be, was not contrary to the Constitution, the EU Treaty, the Charter or the principle of the separation of powers. As far as retired judges are concerned, this law does not alter any of the conditions of service of judges as such and does not affect the principles inherent in the office of judge, such as those of independence, impartiality and irremovability, but does, on the other hand, create an additional guarantee for the preservation of judicial integrity.

Ανώτατο Δικαστήριο Κύπρου, [Opinion of 27/6/2023, Πρόεδρος της Δημοκρατίας και Βουλή των Αντιπροσώπων, No 4/2022 \(GR\)](#)



France – Court of Cassation

Transfer of undertaking – Concept of ‘economic entity’ – Separate parts of an undertaking within the same group

With regard to a research and development activity carried out jointly by two subsidiaries and transferred to a third company, the Court of Cassation has accepted, for the first time, that an autonomous economic entity, within the meaning of Article L.1224-1 of the Labour Code, interpreted in the light of Directive 2001/23/EC, may result from two parts of separate undertakings within the same group. It considers that the existence of an autonomous economic entity is independent of the rules governing the organisation, operation and management of the service carrying out an economic activity.

Cour de Cassation, [judgment of 28/6/2023, No 22-14.834 \(FR\)](#)



Latvia – Supreme Court

Motor liability insurance – Accident involving vehicles registered in two different Member States – Law applicable to recourse action

A case was brought before the Supreme Court (Senate) in a recourse action brought by the Latvian insurance office against a company incorporated under Latvian law, the owner of a vehicle with a trailer that had caused a road traffic accident in Germany. With regard to the reimbursement of sums paid to the German insurance office, the high court set aside the judgment of the appeal court, which had not ruled on the question of applicable law. It concluded that, by virtue of Article 19 of the Rome II Regulation, Latvian law applied as regards the applicant's right to bring an action for recourse and the scope of such an action.

Latvijas Republikas Senāts, [judgment of 29/6/2023, C68278819, SKC-9/2023 \(LV\)](#)
[Press release \(LV\) and \(EN\)](#)



Denmark – Supreme Court

Taxation – Tax on dividends – Beneficial owner of distributed profits

The case concerned whether a Danish company should have withheld tax at source on interest or dividend payments distributed to a parent company domiciled in Luxembourg. The Supreme Court first ruled that taxation should be based on the dividend distribution actually made. It then pointed out that the distribution of the dividends in question constituted an abuse under Directive 2011/96/EU and that the parent company was not the beneficial owner. The beneficial owners were domiciled in third countries that had not signed a double taxation treaty with Denmark. The Danish company therefore had to deduct the withholding tax relating to these payments. Finally, the Supreme Court recalled that the imposition of interest, in accordance with the law on collection, intended, among other things, to encourage payment of the tax due, did not constitute a violation of the company's right to a fair trial under Article 6 of the European Convention on Human Rights or Article 47 of the Charter of Fundamental Rights of the European Union.

Højesteret, [judgment of 30/6/2023, Sag 34/2022-HJR \(DK\)](#)



Germany – Federal Administrative Court

Town planning law – Planning without environmental assessment – Infringement of Union law

The Federal Administrative Court ruled that the first sentence of Article 13(b) of the Baugesetzbuch (German Building Code), which provides for an accelerated procedure without an environmental assessment for the planning of certain peri-urban areas, was not compatible with Article 3(1) and (5) of Directive 2001/42/EC and should therefore be left unapplied.

More specifically, in the context of review proceedings brought by an approved environmental association against a development plan adopted on the basis of the aforementioned provision, the high court found, with reference to the case-law of the Court of Justice, that the conditions set out in this provision, namely, the limitation of the surface area to less than 10,000 square metres, the limitation to residential use, and the fact that the development was located in parts of a locality forming a conurbation, were not such as to exclude a priori, in each and every possible case, significant environmental impacts. Such a general typology, which, in the absence of an exhaustive definition of the conditions for exemption from environmental assessment, tolerates exceptions relating to significant effects on the environment, was to be regarded as inadequate in the light of the objective of Article 3(1) of the Directive, and therefore inadmissible.

Bundesverwaltungsgericht, [judgment of 18/7/2023, 4 CN 3.22 \(DE\)](#)
[Press release \(DE\)](#)



Germany – Federal Court of Justice

Intra-EU ICSID arbitration – Energy Charter Treaty – Upstream national legal protection

The Federal Court of Justice ruled that the Member States of the Union are entitled, before the German courts, to upstream legal protection against arbitration proceedings before the International Centre for Settlement of Investment Disputes (ICSID) brought by investors from other Member States on the basis of Article 26 of the Energy Charter Treaty (ECT).

Firstly, the high court held, applying by analogy the rules of the German Code of Civil Procedure, that the German courts have international jurisdiction to rule that ICSID arbitration proceedings are inadmissible. Secondly, it accepted, on the basis of the case-law of the Court of Justice, that in the specific intra-EU context, an application for a declaration that arbitration proceedings are inadmissible is admissible even if ICSID proceedings have already been commenced, until the arbitration tribunal is formed. In addition, the court recalled that, in the absence of a valid arbitration agreement, particularly in the light of Articles 267 and 344 TFEU, intra-EU arbitration proceedings between an investor and the State concerned initiated on the basis of Article 26 ECT are inadmissible.

Bundesgerichtshof, orders of 27/7/2023, I ZB 43/22 (DE), I ZB 74/22 (DE) and I ZB 75/22 (DE)

Press releases (DE/EN)



Romania – Constitutional Court

Reform of the pension system – Reduction in magistrates' service pensions – Principle of the independence of the judiciary

On the basis of the principle of independence of the judiciary, the Constitutional Court upheld the exception of unconstitutionality raised against the law modifying and completing certain normative acts in the field of service pensions. Firstly, with regard to the basis for calculating the service pension, the Constitutional Court specified that, while its case-law does not require the basis of calculation to be the income of the last month before retirement, it does, however, exclude the possibility of it being established by reference to the average income over a period of 25 years. To determine the basis of calculation, it suggests, by way of example, a formula expressing the income corresponding to the position, grade or seniority at the time of retirement. In this way, the value of the service pension can potentially be brought closer to that of the last salary received. Furthermore, with regard to the retirement age, the Court held that the introduction of the age criterion as a condition for the grant of a service pension and the imposition of a higher retirement age than under the current rules were sufficient grounds for determining a correlative obligation on the legislature to identify a rational legislative solution permitting a gradual and natural transition to the new system, without legal certainty being affected.

Curtea Constituțională, decision of 2/8/2023, No 467 (RO)



Netherlands – Supreme Court

Taxation – VAT – Reduced rate for medical devices

In an appeal against a tax adjustment notice, the Supreme Court ruled that the Court of Appeal was right to hold that the reduced rate of turnover tax for registered medicinal products provided for under national law did not apply to pharmaceutical products sold as medical devices.

This reduced rate of VAT, introduced on the basis of Article 98 of Directive 2006/112/EC and point 3 of its Annex III, had been applied selectively in the Netherlands.

According to the Supreme Court, this selective application was based on objective, clear and precise criteria. Furthermore, it was not contrary to the principle of fiscal neutrality, since registered medicines are not, in view of the quality and control guarantees to which they are subject, interchangeable with pharmaceutical products sold as medical devices.

Hoge Raad, decision of 8/9/2023, 20/04304 (NL)

Press release (NL)



France – Court of Cassation

Protection of workers' health and safety – Organisation of working time – Entitlement to paid leave – Suspension of employment contract due to illness or accident

In a series of rulings, the Court of Cassation reversed its case-law and brought French law into line with EU law by ordering that national provisions contrary to Article 31(2) of the Charter should be disapplied. Thus, it ruled that employees suffering from any kind of illness or accident are entitled to claim paid holiday entitlements by including in their calculation the period during which they were unable to work. In addition, it specifies, firstly, that in the event of an accident at work or occupational disease, the compensatory paid leave allowance cannot be limited to 1 year and, secondly, that the limitation period for paid leave allowance cannot begin to run unless the employer has taken the necessary measures to enable the employee to effectively exercise his or her right to paid leave.

Cour de Cassation, judgments of 13/9/2023 No 22-17.340 to 22-17.342, 22-17.638, 22-10.529 and 22-11.106 (FR)



Spain – Constitutional Court

Consumer protection – Unfair terms - Costs - Right to effective judicial protection

The Constitutional Court unanimously upheld the amparo action (action for the protection of fundamental rights and freedoms) brought by a woman who had been ordered to pay some of the costs relating to the claim against the banks for the recovery of sums resulting from contractual terms that had been declared unfair.

In this respect, the Constitutional Court recalled that account should be taken of the case-law of the Court of Justice indicating that it is the responsibility of the Member States to provide adequate and effective means to put an end to the use of such unfair terms. It follows from this case-law that it is incompatible with the principle of effectiveness of Union law to require the consumer to bear some of the costs of proceedings in which the unfairness of contractual terms has been declared, as this discourages consumers from exercising their rights.

[*Tribunal Constitucional, judgment of 11/9/2023 No 91/2023 \(ES\)*](#)



Austria – Supreme Court

Environment – Reduction in nitrogen oxide emissions limited by a temperature window

Two Austrian nationals had purchased a vehicle fitted with an EA-189 diesel engine that had an illegal disabling device, namely a switching system. This system caused complete recirculation of exhaust gases outside the scope of a technical inspection. After an update, this system was removed. The Supreme Court ruled, among other things, that the switching system constituted a defect on the day the vehicle was handed over. As this system was not removed after the software update, the agreement was cancelled.

[*Oberster Gerichtshof, judgment of 19/9/2023, 2 Ob 5 /23h \(DE\)*](#)
[*Press release \(DE\)*](#)



Lithuania – Supreme Administrative Court

Protection of personal data – Conditions governing the lawfulness of processing

The Supreme Administrative Court ruled that, in the context of the enforcement of enforceable titles, a bailiff is entitled to obtain, from the register of immovable property, access to data concerning the debtor, including data concerning a third party with whom the debtor is closely associated due to their property ties.

The high court held that, in this case, in finding that a bailiff had breached Regulation 2016/679, the supervisory authority had not given sufficient reasons for its decision, as it did not take into account either the fact that the data had been collected by a bailiff in the performance of his duties, or the bailiff's arguments regarding the ability of the information system to delimit the subject of the request for access.

[*Lietuvos vyriausiosios administracinis teismas, judgment of 20/9/2023, eA-895-968/2023 \(LT\)*](#)



Poland – Supreme Court

Independence of judges - Judicial reform – Principles of independence and impartiality of judges – Challenge

In response to a request for the recusal of one of its judges, appointed to the post by the National Council of the Judiciary, which was reconstituted following the recent judicial reform, the Supreme Court upheld the request.

In this respect, it specified that a Member State of the European Union is obliged to ensure that the composition of a court complies not only with national law, but also with the standard of effective judicial protection guaranteed by Union law, in particular Article 19 TEU and Article 47 of the Charter of Fundamental Rights.

Basing itself on the case-law of the Court of Justice concerning these provisions, the Supreme Court points out that decisions handed down by a court whose members include a judge appointed in this way constitute a breach of this standard. Consequently, such a judge should be disqualified ex lege, irrespective of his or her degree of internal impartiality (equal distance from the parties to the dispute and their respective interests) or external independence (absence of instructions in the exercise of his or her functions from any source whatsoever).

[*Sąd Najwyższy, order of 26/9/2023, I USK 326/22 \(PL\)*](#)

Previous decisions



Greece – Council of State

Border controls, asylum and immigration – Convention implementing the Schengen Agreement – Withdrawal of a residence permit – Alert for the purposes of refusing entry into the Schengen Information System

In the context of an appeal relating to the withdrawal of a residence permit, the Council of State held that, when the competent national authorities examine the possibility of withdrawing the residence permit of a foreign national who has been the subject of an alert for the purposes of refusing entry, within the meaning of Article 96 of the Schengen Agreement (CISA), into the Schengen Information System (SIS), by another Member State that is a party to the CAAS, these national authorities must consult the authorities of the Member State issuing the alert on the reasons for the alert. In the event that the Member State examines the circumstances justifying the alert on the alien in the SIS, the withdrawal of the residence permit would comply with Article 25 CISA, insofar as the decision to withdraw the permit and the decision to issue the alert are consistent.

Symvoulio tis Epikrateias, judgment of 18/9/2020, No 159/2020 (EL) [the link to the text of the judgment is not available]