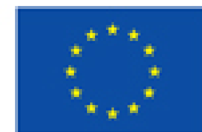

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FLASH NEWS

1/21

MONITORING OF PRELIMINARY RULINGS

OVERVIEW OF THE MONTHS FROM OCTOBER 2020 TO FEBRUARY

Germany – Federal Court of Justice

[Judgment of the Generalbundesanwalt beim Bundesgerichtshof (Principle of specification), C-195/20 PPU]

European arrest warrant – Successive surrenders – Principle of specification

The Federal Court of Justice upheld a global prison sentence for various offences following two successive surrenders of the person by Portugal and Italy respectively, on the basis of consecutive European arrest warrants issued by Germany. In this case, the protection enjoyed by this person under the principle of specification, resulting from the surrender by Portugal on the basis of the first warrant, ended with the subsequent surrender by Italy. That principle does not preclude a conviction for acts other than those that constituted the reason for the first surrender and prior to those acts, since in the present case the person concerned left German territory voluntarily following his first surrender and the Italian executing authority agreed to the prosecution of the acts concerned.

*Bundesgerichtshof, order of 4/11/2020 No 6 StR 41/20 (**DE**)*

Germany – Heilbronn Cantonal Court

[ZW judgment, C-454/19]

Citizenship – Specific criminal offence of international child abduction

Heilbronn Cantonal Court was called upon to rule on the criminal liability of the mother of a child, accused of abduction of a minor on the basis of a provision stipulating that the failure of a parent to hand over his or her child in another Member State to the appointed guardian is punishable by criminal sanctions, whereas, when the child is on German territory, the same act is punishable only in the event of the use of violence, the threat of an appreciable evil or deception.

Noting that, in the Court's view, such legislation is incompatible with Article 21 TFEU, the Court held that the criminal provision in question should be left unapplied and therefore dismissed the case.

*Amtsgericht Heilbronn, order of 3/12/2020 No Cs 36 Js 22275/18 (**DE**)*

Spain – Labour Court No 3 of Barcelona

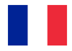
[Marclean Technologies judgment, C-300/19]

Social policy – Collective dismissals – Reference period to be taken into account

Barcelona's Labour Court No 3 upheld an employee's appeal against his dismissal. The employee claimed that other employees had also stopped working for the same company during the 90-day period following his dismissal. Thus, in his view, this situation constituted, in reality, a hidden collective dismissal, incompatible with Directive 98/59.

The Spanish court took into account the reference period for examining the existence of a collective dismissal indicated in judgment C-300/19: namely, any period of 30 or 90 consecutive days during which an individual dismissal occurred and during which the greatest number of dismissals took place, within the meaning of Directive 98/59. Therefore, the court annulled the applicant's dismissal, as the procedure for collective dismissal should have been followed in this case and had not been.

*Juzgado de lo Social nº 3 de Barcelona, judgment of 21/12/2020 No 265/2020 (**ES**)*



France – Court of Cassation

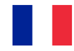
[Bouygues travaux publics and Others judgment, C-17/19]

Social security – Migrant workers – E101 (A1) certificate – Probative force

The Court of Cassation rejected the appeals lodged by companies found guilty of the offences of undeclared work and illegal lending of labour, despite the fact that the workers concerned were covered by posting forms, known as E101 certificates (now A1 certificates).

The Court of Cassation emphasised that, in this case, the criminal proceedings had not only been initiated for failure to declare to the social security bodies, but also for failure to declare prior to hiring. However, the latter aims, in particular, to ensure compliance with the employment and working conditions imposed by labour law. Since E101 and A1 certificates are only required in social security matters, the Court of Cassation, drawing the consequences of the judgment of the Court of Justice, considered that they did not prevent such a conviction.

Cour de cassation, judgment of 12/1/2021, No 17-82.553 (FR)



France – Court of Cassation

[Cali Apartments and HX judgment, C-724/18 and C-727/18]

Freedom to provide services – National rules on short-term rentals

Relying on the judgment in Joined Cases C-714/18 and C-727/18, the Court of Cassation ruled that the authorisation regime set up in France for 'Airbnb' type rentals was in line with Directive 2006/123 on services in the internal market. This system requires prior authorisation for the repeated letting of accommodation for short periods to transient customers who do not take up residence there.

In particular, the Court stressed that such a system was justified by an overriding reason of general interest relating to the fight against the shortage of housing intended for long-term rental, and was proportionate to this objective.

Cour de cassation, judgment of 18/2/2021, No 17-26.156 (FR)

Poland – Supreme Administrative Court

[Konsul Rzeczypospolitej Polskiej w N. judgment (Right to an effective remedy), C-949/19]

Border control, asylum and immigration – Decision to refuse a visa – Right to an effective remedy

The Supreme Administrative Court heard a case concerning a consul's refusal to issue a visa to a third-country national who had indicated his intention to study at a university in Poland. It annulled the decision of the court of first instance declaring the appeal against such a refusal before the administrative court inadmissible. Following the reasoning of the Court of Justice in judgment C-949/19, the high administrative court ruled that the court of first instance had not established that the visa application fell within the scope of Directive 2016/801 and that, consequently, this court should examine the case on the merits.

Naczelny Sąd Administracyjny, order of 13/4/2021, II OSK 2470/19 ***(PL/EN)*** *(available on request)*

The Research and Documentation Directorate's intranet site lists all the 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 drawn up in the context of the follow-up to preliminary rulings are also available, in particular via the internal portal, under each preliminary ruling, under the heading 'Litigation at national level', and on Eureka, under the source 'Analyses', under the heading 'National decision'.