



## FLASH NEWS

1/22

# MONITORING OF PRELIMINARY RULINGS

## OVERVIEW OF THE MONTHS FROM OCTOBER TO DECEMBER 2021



### Poland – Supreme Administrative Court

[Judgment in *A.B. and Others (Nomination des juges à la Cour suprême – Recours)*, [C-824/18](#)]

***Independence of judges - Judicial reform in Poland - Procedure for the appointment of judges***

Following the example of a [series of cases](#) in which the Supreme Administrative Court was seized of disputes between certain candidates for the post of judge at the Supreme Court and the National Council of the Judiciary, concerning resolutions by which the latter decided not to propose the appointment of the persons concerned to the President of the Republic, the Supreme Administrative Court annulled the disputed resolutions concerning appointments to the posts of judges in the Disciplinary and Extraordinary Divisions of the Supreme Court. Recalling that Case C-824/18 is binding on the court in this case, the Supreme Administrative Court ruled that the National Council of the Judiciary did not offer sufficient guarantees of independence from the legislature and the executive in the process of appointing judges.

*Naczelny Sąd Administracyjny, judgments of 21/9/2021, II GOK 8/18, II GOK 10/18, II GOK 11/18, II GOK 12/18, II GOK 13/18, II GOK 14/18 (PL); judgments of 11 October, II GOK 9/18, II GOK 15/18, II GOK 16/18, II GOK 17/18, II GOK 18/18, II GOK 19/18, II GOK 20/18 (PL)*  
[Press release \(PL\)](#)



### Belgium – Constitutional Court

[Judgment in *Katoen Natie Bulk Terminals and General Services Antwerp*, [C-407/19](#) and [C-471/19](#)]

***Freedom of establishment - Freedom to provide services - Undertakings wishing to carry out port activities in a port area - Obligation to use only recognised port workers***

The Constitutional Court ruled that the compulsory use of recognised port workers, not only for the loading and unloading of ships, but also for the preparation of the shipment of semi-trailers on a quay by means of a special vehicle (a tugmaster), is in accordance with the Constitution. Applying the criteria set out by the Court of Justice in Joined Cases C-407/19 and C-471/19, the Constitutional Court considered that the obligation to use only recognised port workers is necessary in order to guarantee safety in port areas and to prevent accidents at work. In view of this objective, it is reasonably justified that this obligation also applies to the preparation of semi-trailers.

*Grondwettelijk Hof, judgment of 25/11/2021, No 168/2021 (FR/NL)*  
[Press release \(FR/NL\)](#)



### Netherlands – Supreme Court

[*Stichting Waternet* judgment, [C-922/19](#)]

***Consumer protection - Distribution of drinking water - Concept of ‘unsolicited supply’***

The Supreme Court was called upon to rule on the question of whether the supply of drinking water by Stichting Waternet to MG constitutes an ‘unsolicited supply’, prohibited by Directive 2005/29/EC.

On the basis of the judgment in Case C-922/19, the Supreme Court found that the distribution of drinking water does not fall within the scope of Directive 2005/29/EC, since the Dutch law on water distribution aims to protect public health and does not pursue objectives relating to the protection of consumers’ economic interests. Consequently, the Supreme Court found that in this case it was not necessary to determine whether the supply of drinking water constituted an ‘unsolicited supply’ within the meaning of that Directive.

*Hoge Raad, judgment of 17/12/2021, No 18/02999 (NL)*



## Belgium – Constitutional Court

[Judgment in *Ordre des barreaux francophones et germanophone and Others*, [C-718/19](#)]

***Union citizenship - Maximum period of detention for expulsion purposes - National provision identical to that applicable to third-country nationals***

The Constitutional Court annulled the provision allowing Union citizens and their family members to be detained for the purpose of expulsion for up to 8 months, which is the same period of time as for third-country nationals. Relying on the judgment in Case C-718/19, it considered that these two categories are not in a comparable situation as regards the duration of the expulsion procedure, and that there is therefore no justification for applying the same maximum period of detention to them. On the other hand, it rejected the complaint against the possibility of imposing preventive measures on Union citizens and their family members to avoid the risk of absconding, stressing that it is for the executive to determine such measures in compliance with the requirements arising from the judgment of the Court of Justice.

*Cour constitutionnelle*, [judgment of 23/12/2021, No 187/2021 \(FR/NL\)](#)  
[Press release \(FR/NL\)](#)

## PREVIOUS DECISION



## Netherlands – Council of State

[Judgment in *Stichting Varkens in Nood and Others*, [C-826/18](#)]

***Environment - Aarhus Convention - Access to justice***

Drawing the consequences of judgment C-826/18, the Council of State ruled that, in the case of decisions falling within the scope of Article 6 of the Aarhus Convention, Article 6:13 of the General Administrative Law Act, where the 'uniform public preparatory procedure' had been applied, and Article 8:1 of the same Act, were contrary to Article 9 of that Convention, concerning access to justice. Pending legislative intervention, the Council of State gave a broad interpretation of the Convention. It concluded that, in order for an appeal against an environmental law decision that has been prepared by applying the preparatory procedure to be admissible, the person concerned is not obliged to have participated in that preparatory procedure. Furthermore, if any person is allowed to participate in the preparatory procedure, it is not necessary for a person who has participated to have the status of an interested party.

*Raad van State*, decisions [of 14/4/2021, 201908374/1/R3 \(NL\)](#) and [of 4/5/2021, 202003081/1/R3 \(NL\)](#)  
[Press releases 201908374/1/R3 \(NL\)](#) and [202003081/1/R3 \(NL\)](#)

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'.