



FLASH NEWS

2/23

MONITORING OF PRELIMINARY RULINGS

OVERVIEW OF THE MONTHS FROM DECEMBER 2022 TO MARCH 2023



Finland – Supreme Court

[Keskinäinen Vakuutusyhtiö Fennia, [C-264/21](#)]

Liability for defective products - Concept of ‘producer’

The Supreme Court based itself on the judgment of the Court of Justice in Case C-264/21 in holding that the concept of ‘producer’ in Article 3(1) of the Product Liability Directive (85/374/EEC) does not require that the person who has affixed his name, trade mark or other distinctive sign to the product, or who has authorised that affixing, must also present himself as the producer of the product in some other way. The national legislation must therefore be interpreted as meaning that, notwithstanding its wording.

Korkein oikeus, [judgment of 2/2/2023, No KKO:2023:8 \(FI\)/\(SV\)](#).



Latvia – Constitutional Court

[Cilevičs and Others, [C-391/20](#)]

Right to property - Legitimate expectations - Private higher education establishments - Obligation to provide their teaching programmes exclusively in Latvian

Following the judgment of the Court of Justice in Case C-391/20, the Constitutional Court, hearing an action brought by 20 Members of Parliament, ruled that Article 56(3) of the Law on Higher Education Establishments, and point 49 of the transitional provisions of that Law, prohibiting private higher education establishments from offering their programmes in the official languages of the Union other than Latvian, were incompatible with Articles 1 (legitimate expectations) and 105 (right of ownership) of the Constitution, having regard to the freedom of establishment. In contrast, the Court ruled that such a ban on the languages of third countries was compatible with the Constitution, since it was justified by the need to promote the use of the official language in Latvia.

*Latvijas Republikas Satversmes tiesa, [judgment of 9/2/2023, 2020-33-01 \(LV\)](#)
[Press release \(LV\)](#) and [\(EN\)](#)*



Germany – Schleswig-Holstein Administrative Court

[Deutsche Umwelthilfe (Réception des véhicules à moteur), [C-873/19](#)]

Pollutant emissions - Environmental protection association

The case stems from a decision by the Kraftfahrt-Bundesamt (Federal Office for Motor Vehicle Traffic), which certified that VW Golf Plus TDI vehicles fitted with the EA 189 Euro 5 generation diesel engine, types CBDA, CBDB, CBDC, CFHB and CFHC, met the requirements of European Union law.

In essence, Schleswig-Holstein Administrative Court annulled the contested decision and ordered the car manufacturer in question to take the necessary measures to ensure that the vehicles in question complied with European Union law. The Administrative Court also endorsed the Court’s interpretation in that it confirmed the legal standing of the environmental protection association Deutsche Umwelthilfe eV.

Schleswig-Holsteinisches Verwaltungsgericht, [judgment of 20/2/2023, 3 A 113/18 \(DE\)](#)

 **Netherlands** – Court of Appeal for Social Security and Civil Service Matters

[Raad van bestuur van de Sociale verzekeringbank (Intervalles entre des missions de travail intérimaire), [C-713/20](#)]

Social security - Migrant workers - Applicable legislation

Following the judgment of the Court of Justice in Case C-713/20, the Court of Appeal for Social Security and Civil Service Matters held that the defendants, who were resident in Poland and Germany respectively and who carried out temporary work assignments in the Netherlands, were subject to the legislation of the countries of residence and not to Netherlands legislation during the intervals between these assignments.

According to the high court, the Social Insurance Bank in the Netherlands had rightly taken the view that the people concerned were not insured under Dutch social legislation during these periods.

Centrale Raad van Beroep, [decision of 24/2/2023, 16/6955 AOW \(NL\)](#) and [decision of 31/3/2023, 17/563 AKW \(NL\)](#)

 **Poland** – Warsaw Court of Appeal

[Rzecznik Praw Dziecka and Others (Suspension de la décision de retour), [C-638/22 PPU](#)]

Judicial cooperation in civil matters - International child abduction - Stay of enforcement of a return order

In a dispute between the father of two children and their mother, Warsaw Court of Appeal was asked to return the children to their country of residence (Ireland) under the 1980 Hague Convention. In this case, following a decision of 28 September 2022, which had become final, ordering the return of the children, the Children's Rights Ombudsman and the Public Prosecutor lodged applications in September and October 2022 respectively for a stay of execution of this decision, an option available to these authorities under the Code of Civil Procedure. Such a request, which said authorities are not obliged to justify, entails an automatic suspension of the decision for a period of at least 2 months. In accordance with the judgment in Case C-638/22 PPU, according to which European Union law precludes national legislation that confers the aforementioned power on authorities that do not have the status of courts, Warsaw Court of Appeal ordered that the decision to return the children to Ireland be enforced.

Sąd Apelacyjny w Warszawie, order of 27/2/2023, I ACa 1127/22, (PL) [the link to the text of the decision is not available]

 **Bulgaria** – Supreme Administrative Court

[Pancharevo, [C-490/20](#)]

Citizenship of the European Union - Child born in the host Member State of two mothers - Refusal by the Member State of origin of one of those two mothers to issue a passport to that child

In its decision, the Supreme Administrative Court annulled the judgment of Sofia City Administrative Court, which had followed the judgment in Case C-490/20. In this judgment, the Court of Justice ruled that the child, born in Spain to a couple of two women, one of Bulgarian nationality and the other of British nationality, attested by a birth certificate mentioning both mothers, issued in Spain, has Bulgarian nationality and that a passport must be issued to the child by the Bulgarian authorities.

However, basing itself on the exclusive competence of the Member States in the areas of nationality and family law, the Supreme Administrative Court considered that the child in question was not a Bulgarian national. In view of the requirements of Bulgarian law, which does not recognise same-sex parenthood, it refused to issue the child with a Bulgarian passport, in the absence of information about the identity of the child's biological mother.

Varhoven administrativen sad, [judgment of 1/3/2023, No 02185, Administrative Case No 6746/2022\(BG\)](#)

 **Belgium** – Aliens Litigation Council

[Belgische Staat (Réfugiée mineure mariée), [C-230/21](#)]

Immigration policy - Family reunification of a minor refugee married to his ascendants - Child marriage

The Aliens Litigation Council annulled the decision rejecting a visa application submitted by a Palestinian mother for family reunification with her minor daughter, who was married when she entered Belgium.

Basing itself on the judgment in Case C-230/21, the Aliens Litigation Council held that the Belgian authorities could not take into account the civil status of a minor refugee when examining his or her right to family reunification with his or her parents. It emphasised that this right to family reunification granted to unaccompanied minor refugees is not subject to any margin of discretion on the part of the Member States, thus rejecting the authorities' argument that the European Commission's Communication on guidelines for the application of Directive 2003/86/EC would allow them to take account of other relevant factors.

Raad voor Vreemdelingenbetwistingen, [judgment of 16/3/2023, No 286 234 \(NL\)](#)



Finland – Supreme Administrative Court

[Sosiaali- ja terveystieteiden lupa- ja valvontavirasto (Formation médicale de base), [C-634/20](#)]

Recognition of professional qualifications - Restriction of the right to practise the profession of doctor to a period of 3 years

A had obtained a basic medical degree in the United Kingdom. However, after applying for recognition of his professional qualifications in Finland under Directive 2005/36/EC, the competent authority (Valvira) imposed additional supervision and training requirements.

Basing itself on the judgment in Case C-634/20, the Supreme Administrative Court held that the competent authority should have made a comparison between the applicant's professional qualifications and the knowledge and qualifications required by national legislation. In the absence of such a comparison, the condition relating to additional training could not be imposed on him by said authority.

Korkein hallinto-oikeus, 28/3/2023, [ECLI:FI:KHO:2023:26 \(FI\) \(SV\)](#)



Netherlands – Court of The Hague

[Staatssecretaris van Justitie en Veiligheid (Éloignement de la victime de la traite d'êtres humains), [C-66/21](#)]

Border controls, asylum and immigration - International protection - Transfer of responsibility

In its judgment in Case C-66/21, the Court of Justice essentially ruled on the prohibition on enforcing a removal order during the reflection period referred to in Article 6 of Directive 2004/81/EC.

Basing itself on that judgment, the Court of The Hague considered that the applicant for international protection no longer had an interest in bringing proceedings in the case in point, since he had, after lodging an application for international protection in the Netherlands, lodged such an application in Belgium. According to the court, Belgium had then become responsible for conducting the international protection procedure and the applicant had therefore withdrawn his application for international protection in the Netherlands. The Court in The Hague therefore declared the applicant's appeal inadmissible.

Rechtbank Den Haag, [decision of 31/3/2023, NL19.18937 \(NL\)](#)



Slovenia – Supreme Court

[NEC PLUS ULTRA COSMETICS, [C-664/21](#)]

Common system of value added tax (VAT) - Time limit for submission of evidence

The Supreme Court overturned an Administrative Court ruling on the taxation of property. Basing itself on the judgment in Case C-664/21, the Court emphasised that, inasmuch as the tax authorities had not yet adopted a tax decision in respect of the applicant at the date on which the latter had provided additional evidence in support of the right to VAT exemption, a refusal to take account of that evidence had to be based on special circumstances such as, in particular, the absence of any justification for the delay incurred or the fact that the delay constituted an abuse of rights. The refusal to take into account evidence from a date prior to the adoption of such a tax decision is liable to make it excessively difficult to exercise the rights recognised by the legal order of the European Union, inasmuch as such a refusal restricts the taxable person's ability to produce evidence relating to the fulfilment of the substantive conditions for obtaining exemption from VAT. Thus, as the high court considered that the applicant's delay, due to the cessation of activities of one of its offices, which had not submitted all the necessary documentation within the allotted time, constituted negligent conduct, it set aside the contested decision and referred the case back to the administrative court.

Vrhovno sodišče Republike Slovenije, [order of 12/4/2023, VSRS Sklep X Ips 51/2021 \(SI\)](#)

PREVIOUS DECISION



Portugal – Court of Lisbon

[Ferreira da Silva e Brito, [C-160/14](#)]

Referral to the Court - Questions of interpretation - Obligation to refer

On 25 February 2009, the Supreme Court ruled that, in the case before it concerning the dissolution of a company in 1993 and the takeover of some of its activities by its main shareholder, there had been no transfer of an undertaking. However, dismissed employees who had challenged their dismissal before Lisbon Labour Court, arguing that the undertaking had been transferred, brought an action for damages before the Court of Lisbon against the Portuguese State for manifest infringement of European Union law. They argued that the Supreme Court should have referred the interpretation of Directive 2001/23/EC to the Court of Justice. However, basing itself on the judgment in Case C-160/14, the Court of Lisbon concluded that, given the development of European Union case-law, the Supreme Court's decision in 2009 was not a clear breach of European Union law, despite the absence of a referral to the Court of Justice.

Tribunal de Lisboa, judgment of 20/12/2019, Case No 6699/09.5TVLSB (the link to the text of the decision is not available).

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'.