



FLASH NEWS

2/24

MONITORING OF PRELIMINARY RULINGS

DECEMBER 2023 - MARCH 2024



Czech Republic – Supreme Administrative Court

[*Ředitelství silnic a dálnic*, [C-57/22](#)]

Social policy - Employee unlawfully dismissed and then reinstated - Entitlement to annual leave

The Supreme Administrative Court, adopting the Court's reasoning in C-57/22, ruled that a worker dismissed without just cause and then reinstated in his job is entitled to paid annual leave for the period between the date of dismissal and the date of reinstatement in his job.

Accordingly, the high court annulled the decisions of the lower courts, which had held, in breach of Article 7 of Directive 2003/88/EC, that such a worker was not entitled to paid annual leave, on the grounds that, during that period, the worker had not performed any actual work for the employer, since the employer had not entrusted him with any work and he was already receiving remuneration compensation for that period.

Nejvyšší správní soud, [judgment of 13/12/2023, No 21 Cdo 2124/2021 \(CS\)](#)



Spain – Malaga Provincial Court

[CAJASUR Banco, [C-35/22](#)]

Unfair terms - National rules on the apportionment of costs

In C-35/22, the Court of Justice held that Spanish rules on the apportionment of legal costs requiring a consumer to take a pre-litigation step so as not to be ordered to pay the costs of the proceedings in the event of acquiescence by the professional were not contrary to Directive 93/13/EEC, provided that the national court could rely on well-established national case-law finding similar terms to be unfair, conclude that the professional had acted in bad faith and, where appropriate, order him to pay those costs.

In the dispute at issue in the main proceedings, the clause relating to charges in the loan contract in question having been declared unfair, the Provincial Court, relying on C-35/22, found that the financial entity had acted in bad faith and ordered it to pay the costs, despite the fact that the consumer had not taken any pre-litigation steps with the financial entity and the entity had not acquiesced.

Audiencia Provincial de Málaga, [judgment of 21/12/2023, ECLI:ES:APMA:2023:3594 \(ES\)](#)



Sweden – Supreme Court

[Norra Stockholm Bygg, [C-268/21](#)]

Protection of personal data - Right to effective judicial protection

Relying on C-268/21, the Supreme Court held that the right to effective judicial protection and a fair trial implies that parties must have access to the documents they may need to prove their case. This also applies to the personal data of third parties. In this case, a Swedish trading company had requested, in civil court proceedings, that another trading company be ordered to produce a staff register containing personal data relating in particular to the identity and national identification number of the persons concerned. In this regard, the Supreme Court held that such data do not constitute particularly sensitive data. However, in the present case, the applicant company had not explained in detail why data in the form of a national identification number were necessary. The Supreme Court thus ruled that the company holding the staff register in question was obliged to produce it, with the national identification numbers of the persons concerned redacted.

Högsta domstolen, [order of 29/12/2023, No Ö 1750-20 \(SV\)](#)
[Press release \(SV\)](#)

 **Czech Republic – Brno Regional Court**

[**Odbor azylové a migrační politiky MV (Champ d'application de la directive retour), [C-257/22](#)**]

Immigration policy - Return of third-country nationals - Application for international protection

Relying on the Gnanđi (C-181/61) and Odbor azylové a migrační politiky MV (Champ d'application de la directive retour) (C-257/22) rulings, as well as the case-law of the Nejvyšší správní soud (Supreme Administrative Court), Brno Regional Court annulled a decision of the police authority on the deportation of an Algerian national, taken before the decision on the latter's application for international protection had been adopted.

Brno Regional Court ruled that the police authority should not have opened an administrative procedure against the said national concerning his deportation to Algeria before the Ministry of the Interior had had a chance to rule on the application for international protection. In any case, even if such a procedure had been initiated, it would only have been in the event of a negative decision by the Ministry of the Interior that the police authority could have adopted an administrative expulsion decision.

While Brno Regional Court states that it followed the judgment in C-257/22, it points out that the Court did not settle the central question that was the subject of the reference. It observes that it is not clear from the said judgment whether it is possible to initiate administrative expulsion proceedings after an application for international protection has been lodged and to issue an expulsion decision before the outcome of the proceedings concerning the granting of international protection.

Krajský soud v Brně, [judgment of 19/1/2024, No 41 A 35/2021-118 \(CS\)](#)

 **Austria – Administrative Court**

[**Österreichische Datenschutzbehörde, [C-33/22](#)**]

Protection of personal data - National security - Committee of inquiry set up by the parliament of a Member State

In 2018, the Austrian Parliament set up a committee to investigate possible political influence on the Federal Office for the Protection of the Constitution and the Fight against Terrorism. After a hearing, the record of the hearing, including the name of a witness, was published on the Austrian Parliament's website. The said witness subsequently lodged a complaint with the Data Protection Authority.

In its judgment, the Administrative Court ruled that the aforementioned authority is competent to rule on the complaint of the aforementioned witness in the exercise of its power to control the executive power.

Verwaltungsgerichtshof, [judgment of 1/2/2024, Ro 2021/04/0006 \(DE\)](#)

 **Germany – Federal Court of Justice**

[**BMW Bank, [C-38/21](#), [C-47/21](#) and [C-232/21](#)**]

Consumer credit agreement - Right of withdrawal - Information requirements

The Federal Court of Justice ruled, taking into account the judgments in cases C-38/21, C-47/21 and C-232/21, that the absence of certain information required by Directive 2008/48/EC in a consumer credit agreement does not prevent the 14-day withdrawal period from starting to run. Thus, the information provided on the right of withdrawal benefits from the presumption of legality provided by national law. As for the absence of any indication of the amount of daily interest, this is not prejudicial, since it is favourable to the consumer and is not misleading.

Furthermore, the fact that the information relating to the applicable rate of default interest and the method of calculating the early repayment indemnity does not comply with Directive 2008/48/EC does not affect the start of the withdrawal period, provided that the said information is comprehensible to an average consumer who is reasonably well-informed and reasonably observant and circumspect.

Lastly, the high court found that the indications relating to the fact that the contract was open-ended and to the out-of-court complaint and appeal procedures met the requirements laid down by the Court in this case.

Bundesgerichtshof, [judgment of 27/2/2024, XI ZR 258/22 \(DE\)](#)

[Press release \(DE\)](#)

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'.