



FLASH NEWS

3/21

MONITORING OF PRELIMINARY RULINGS

OVERVIEW OF THE MONTHS OF JUNE TO SEPTEMBER 2021



Estonia – Supreme Court

[Prokuratuur judgment, [C-746/18](#)]

Processing of personal data - Electronic communications - Access by national authorities to data stored for investigative purposes - Authorisation by the public prosecutor's office

In Case C-746/19, the Supreme Court found that the provision of the Electronic Communications Act imposing an obligation on telecommunications operators to store all traffic and location data, specified by national regulations, of all users and terminal equipment for a period of 1 year from the moment of telecommunication was contrary to EU law. It also ruled that the provision in the Code of Criminal Procedure giving the public prosecutor's office the power to authorise the supervisory authority to request data from a telecommunications operator in the context of preliminary proceedings was also contrary to EU law.

Riigikohus, [judgment of 18/6/2021, No 1-16-6179/111 \(ET\)](#)



Greece – Council of State

[Kalliri judgment, [C-409/16](#)]

Social policy - Equal treatment of men and women - Minimum height for entry to the police academy

The Council of State agreed with the position of the Court of Justice on the incompatibility of the minimum height requirement for entry into the police academy, imposed by Greek regulations, with Directive 76/207/EEC on equal treatment for men and women. It considered that the provision in question introduced indirect discrimination against female candidates. The Council of State found that the regulations put a disproportionately large number of women at a disadvantage compared to men, that they did not appear to guarantee the achievement of the objective pursued by the regulations, i.e. the identification of candidates with the physical abilities required for the proper performance of police duties, and that they went beyond what was necessary to achieve the objective.

Symvoulío tis Epikrateias, [judgment of 18/6/2021, 902-907/2021 \(EL\)](#)



Poland – Supreme Administrative Court

[P. (Fuel cards) judgment, [C-48/20](#)]

Taxation - Value added tax - VAT improperly invoiced - Principle of fiscal neutrality

The Supreme Administrative Court upheld the appeal lodged by a Lithuanian company against the decision of the Court of First Instance, which had found that the issuing of invoices by the company with improper reference to VAT had led to a risk of loss of tax revenue for the State.

The high administrative court ruled, based on the judgment in Case C-48/20, that the Court of First Instance had wrongly considered that such a risk of loss existed with regard to a taxable person acting in good faith, who had not been able to adjust the invoice improperly mentioning VAT, in the absence of a procedure allowing adjustment when a tax audit was initiated. In holding that the Court had failed to take into account the principle of fiscal neutrality set out in Article 1(2) of Directive 2006/112/EC, the Supreme Administrative Court annulled the contested judgment.

Naczelny Sąd Administracyjny, [judgment of 24/6/2021, I FSK 1535/17 \(PL\)](#)

 **Austria – Linz Regional Court**

[Land Oberösterreich judgment, [C-94/20](#)]

Border controls, asylum and immigration - Status of third-country nationals who are long-term residents - Equal treatment

Linz Regional Court upheld the appeal lodged by the State of Upper Austria against the decision of the Court of First Instance, which had upheld the claim of a Turkish national for compensation for the damage he allegedly suffered as a result of the refusal to grant him housing assistance.

Relying on the judgment in Case C-94/20, the Court held that national regulations making the granting of this assistance conditional on proof of language skills did not constitute discriminatory treatment on the basis of ethnic origin under Directive 2000/43/EC. In view of the fact that the applicant's claim was limited to compensation for the damage suffered, the Court did not consider it necessary to assess whether that assistance could be classified as an 'essential service' within the meaning of Directive 2003/109/EC.

Landesgericht Linz, judgment of 8/7/2021, unpublished, available on request

 **Poland – Warsaw Court of Appeal**

[Mittelbayerischer Verlag judgment, [C-800/19](#)]

Judicial cooperation in civil matters - Special jurisdiction in matters relating to tort or quasi-tort

Warsaw Court of Appeal was asked to rule on the jurisdiction of Warsaw Regional Court under Article 7(2) of Regulation No 1215/2012 in an appeal brought by a German newspaper publisher against an order of Warsaw Regional Court. The case concerned a Polish national, resident in Warsaw, and a former prisoner of a concentration camp during the Second World War. He had filed an application before the said court claiming that his personal rights had been violated by an article published in this German newspaper, as it used the expression 'Polish extermination camp of Treblinka'.

Adopting the interpretation given by the Court of Justice in Case C-800/19, the Court of Appeal held that the link between the disputed expression and the nationality of the former prisoner was not sufficient to identify him as an individual, either directly or indirectly. Moreover, there was no particularly close link between the Polish court, in the Member State in which the centre of the prisoner's interests was located, and the dispute at issue. Consequently, the Court of Appeal declared itself without jurisdiction and dismissed the appeal.

Sąd Apelacyjny w Warszawie, order of 16/7/2021, I ACz 605/19 (PL)

 **Ireland – Supreme Court**

[Volkmar Klohn judgment, [C-167/17](#)]

Environment - Assessment of the effects of certain projects on the environment - Appeal against a building permit - Cost of proceedings

Following the judgment delivered under the preliminary ruling procedure in Case C-167/17, the Supreme Court decided to reduce the amount of costs to be paid by the successful applicant in his appeal against a building permit, so that the amount is not prohibitive. According to this court, the prohibitive nature of costs is assessed on the basis of several factors, both objective and subjective, including the personal financial situation of the applicant and the costs already incurred by the applicant for the payment of his or her own lawyers. It therefore held that there was no need for the applicant to bear the full costs incurred by the successful party in the proceedings.

Supreme Court, judgment of 3/8/2021, [IESC] 51 (EN)

 **Belgium – Constitutional Court**

[Centraal Israëlitisch Consistorie van België and others judgment, [C-336/19](#)]

Fundamental rights - Freedom of religion - Requirement to stun in case of ritual slaughter

The Constitutional Court ruled in two judgments that the Flemish and Walloon decrees requiring the stunning of animals prior to their slaughter were in conformity with the Constitution and therefore dismissed the actions for annulment brought against these decrees. Relying on the judgment in Case C-336/19, it held that a ban on slaughter without stunning constituted a restriction on the religious freedom of Jewish and Muslim believers, but that reversible, non-lethal stunning during ritual slaughter met a compelling social need and was proportionate to the objective of promoting animal welfare. Furthermore, the Constitutional Court clarified that this reversible stunning requirement cannot be interpreted as prescribing the manner in which a religious rite must be performed in view of the State's duty of neutrality and impartiality.

*Grondwettelijk Hof, judgment of 30/9/2021, No 117/2021 (NL) / (FR) – Press release (NL) / (FR)
Cour constitutionnelle, judgment of 30/9/2021, No 118/2021 (FR) / (NL)*

DECISION PRIOR TO JUNE 2021

Ireland – Supreme Court

[VK judgment, [C-739/19](#)]

Freedom to provide services - Obligation for a foreign lawyer to act in concert with a national lawyer

The Supreme Court, relying on the judgment in Case C-739/19, allowed a German lawyer to appear before an Irish court without being accompanied by an Irish lawyer, ruling out the application of the contrary national provision in this case, as it went beyond what is necessary for the proper administration of justice.

According to the Supreme Court, the German lawyer was able to represent the applicant in the same way as an Irish lawyer as he had the necessary experience before the Irish courts. Moreover, the same lawyer had already represented the applicant in proceedings for a preliminary ruling on the same issue as the one in dispute before the Irish court.

Supreme Court, [judgment of 23/4/2021, \[IESC\] 30 \(EN\)](#)

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'.