



FLASH NEWS

5/19

MONITORING OF PRELIMINARY RULINGS

OVERVIEW OF SEPTEMBER AND OCTOBER 2019



Germany – Higher regional court of Berlin

[NJ judgment, [C-489/19](#)]

European arrest warrant - Issuance by the Austrian public prosecutor's office and approval by a court prior to its transmission - Admissibility of the request for surrender

The Higher Regional Court of Berlin declared admissible the request for the surrender of NJ to Austria on the basis of a European arrest warrant issued by the public prosecutor's office in Vienna and subsequently approved by a decision of the Vienna Regional Court.

Agreeing with the reasoning of the Court of Justice, the Higher Regional Court of Berlin concluded that such an arrest warrant falls within the concept of a "European arrest warrant" in Article 1(1) of Framework Decision 2002/584, since, although the Austrian public prosecutor's offices may be subjected, directly or indirectly, to individual orders or instructions from the executive branch in connection with the issuance of such an arrest warrant, approval by a court prior to its transmission sufficiently guarantees independent and objective control of the conditions of issuance and the proportionality of said warrant.

Kammergericht Berlin, Judgment of 14 October 2019, (4) 151 AusLA 106/19 (103/19) (DE), unpublished, available on request.



Austria - Regional Administrative Court of Styria

Maksimovic and Others judgment, [C-64/18, C-140/18, C-146/18, C-148/18](#)

Posted workers - Provision of labour - Sanctions

The administrative court allowed the appeal brought by the manager of an undertaking against a decision taken by the competent administrative authority, by which the latter had imposed fines for failure to fulfil obligations relating to the cross-border provision of labour.

Ruling that the case concerned the posting of workers and not the provision of labour, the Court annulled that decision. In this respect, it may be noted that while the Maksimovic judgment (C-64/18) had no impact in this case, it now serves as a basis in other comparable cases for the adjustment of administrative fines.

Landesverwaltungsgericht Steiermark, [judgment of 24/09/2019, LVwG 33.13-1736/2017 \(DE\)](#)



Bulgaria – Specialised Criminal Court

[AH and Others ruling (Presumption of innocence), [C-377/18](#)]

Judicial cooperation in criminal matters - Directive 2016/343 - Agreement concluded between the prosecutor and the offender - National jurisprudence providing for the identification of prosecuted persons who have not concluded such an agreement

The Specialised Criminal Court endorsed the interpretation of the Court of Justice and, in the procedure for approving an agreement concluded between the prosecutor and a prosecuted person who had admitted guilt in exchange for a reduction in sentence, amended the terms of such agreement in so far as it contained references to the full names and identification numbers of the other persons involved in the criminal proceedings, as required by national jurisprudence. According to the latter, the text of the agreement must correspond entirely to the text of the indictment, even if these persons are not convicted.

In this respect, the Specialised Criminal Court stated that, for the purposes of the legal characterisation of the incriminated act and the examination of the criminal responsibility of the person prosecuted, with regards the other persons involved in the criminal proceedings, it is sufficient to indicate 'third persons' without identifying them by their full name or their identification number, in so far as their guilt has not been legally established.

Spetsializiran nakazatelen sad, judgment of 24/09/2019, unpublished, available on request.



Spain – Supreme Court

[Abanca Corporación Bancaria and Bankia judgment, [C-70/17 and C-179/17](#)]

Consumer protection - Unfair terms - Acceleration clause in a mortgage loan agreement - Consequences of the nullity of the clause

The Supreme Court ruled on the effects of declaring acceleration clauses in long-term mortgage loan agreements void. It found that these contracts could not survive in the absence of such clauses. However, the nullity of the contract would expose the consumer to particularly damaging consequences. Therefore, based inter alia on the judgment in Cases C-70/17 and C-179/17, the Supreme Court ruled that such unfair terms should be replaced by a recently approved statutory consumer protection provision, namely Article 24 of Act 5/2019 of 15 March 2019 on mortgage credit agreements. Finally, the Supreme Court has issued jurisprudential guidance to national courts on how to deal with pending mortgage enforcement proceedings based on acceleration clauses which are found to be unfair.

*Tribunal Supremo, Sala de lo Civil, [judgment of 11/09/2019, STS No. 2761/2019 \(ES\)](#)
[Press release \(ES\)](#)*



Poland – Administrative Supreme Court

[Arrêt Grupa judgment, [C-225/18](#)]

Taxation - VAT - Purchase of accommodation and restaurant services - standstill clause

In the context of a dispute between a company purchasing accommodation and catering services and the Minister of Finance, the Supreme Administrative Court was called upon to rule on a tax rescript relating to the question whether companies purchasing accommodation and catering services are actually entitled to deduct input tax if there is no doubt that they have used these services for business purposes and not for private purposes.

Dismissing the appeal in cassation, the Supreme Administrative Court ruled that a company which purchases accommodation and restaurant services does not provide tourist services and is therefore deprived of the right to deduct the VAT charged on the purchase of such services which it charges to other taxpayers.

Najwyższy Sąd Administracyjny, [judgment of 11/09/2019, I FSK 2084/15\(PL\)](#)

DECISION PRIOR TO SEPTEMBER 2019



Poland – Supreme administrative court

[Budimex judgment, [C-224/18](#)]

Taxation - VAT - Construction and assembly work

The Supreme Administrative Court was seised in the context of a dispute between a company active in the construction sector and the Minister of Finance regarding a tax rescript concerning the issue of the moment of VAT liability.

The Supreme Administrative Court accepted the Court of Justice's interpretation and upheld the appeal in cassation, ruling that the moment of formal acceptance of the construction and assembly services agreed in the contract drawn up in accordance with the standards of the International Federation of Consulting Engineers (FIDIC), which reflect the economic and commercial reality of the field, corresponds to the material completion of the service and definitively establishes the amount due.

Najwyższy Sąd Administracyjny, [judgment of 18/07/2019, I FSK 65/16 \(PL\)](#)

The intranet site of the Research and Documentation Directorate lists all 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 established in the context of the follow-up of preliminary rulings are also available via the internal portal, under each preliminary ruling, under the heading 'disputes at the national level'.