



FLASH NEWS

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COVID-19

OVERVIEW OF DECISIONS IN THE PERIOD SEPTEMBER - DECEMBER 2021



Portugal – Constitutional Court

Judicial procedure - Organisational arrangements for hearings - Principle of equality of arms

On appeal by the Commercial Court of Vila Franca de Xira, the Constitutional Court ruled that the COVID-19 measure of allowing remote cross-examination, when the main examination had been allowed to take place in person, complied with the principle of equality of arms. Consequently, this change in the organisational form of the hearing was accepted by the said Court.

*Tribunal Constitucional, [judgment of 22/9/2021, No 738/2021 \(PT\)](#)
[Press release \(EN\)](#)*



Austria – Constitutional Court

Public health - Gastronomy - Measure prohibiting ski huts from offering takeaway food

For the 2020/2021 winter season, several *Länder* adopted regulations to prohibit ski huts from offering takeaway food when the public could not access the hut by car, in order to avoid large gatherings in the vicinity of the hut and thus respect safety distances.

The Constitutional Court ruled that these regulations were contrary to the principle of equality as there was no reason for different treatment between huts that were accessible by car and those that were not. More specifically, the mere fact that a ski hut was accessible by car did not mean that there was enough space to avoid large gatherings.

*Verfassungsgerichtshof, [judgments of 23/9/2021 and 6/10/2021, V5/2021 and others\(DE\)](#)
[Press release \(DE\)](#)*



Cyprus – Supreme Court

Property law - Tenancy of immovable property - Interim law prohibiting eviction of tenants - Violation of the principle of separation of powers

At the request of the President of the Republic, the Supreme Court declared a national law aimed at providing temporary protection for tenants against eviction from their homes during the COVID-19 pandemic to be incompatible with the Cypriot Constitution.

According to the Supreme Court, despite its temporary nature, this law, which was adopted to guarantee the right to housing and a decent life for tenants who had become economically and socially vulnerable as a result of the pandemic, was contrary to the principle of the separation of powers. The law in question was intended to suspend any pending or future expulsion proceedings, thereby encroaching on the competence of the Cypriot courts to order or suspend such proceedings.

Ανώτατο Δικαστήριο Κύπρου, [judgment of 5/10/2021, Πρόεδρος της Δημοκρατίας και Βουλή των Αντιπροσώπων, No 1/2020 \(GR\)](#)



Netherlands – Council of State

Access to documents - Administrative documents relating to COVID-19 - Failure to take a decision within the period normally applicable - Determination of a new period by the Council of State

Two Dutch television stations asked the Minister for Health, Welfare and Sport to disclose documents relating to COVID-19, including the Minister's questions to the Epidemic Management Advisory Council. The Council of State indicated that it understood that the Minister had not been able to adopt a decision on the above-mentioned applications within the normally applicable time frame due to the COVID-19 pandemic. However, the Council of State ruled that the Minister had reacted too late and thus determined that the Minister should decide on the requests by 30 November 2021.

Raad van State, [decision of 20/10/2021, 202105166/1/A3 \(NL\)](#) [Press release \(NL\)](#)



Austria – Supreme Court

Property law - Rental of buildings - Exemption from rent

A tenant lodged a claim against the eviction of his business premises on the grounds that he had not paid the rent for April 2020. He argued that he was exempt from paying this rent, as the use of his solarium was not possible during that month due to government health measures.

The Supreme Court ruled that, in the context of preventing the spread of COVID-19, this tenant was not obliged to pay the rent claimed as he had been unable to use his solarium due to a government ban.

*Oberster Gerichtshof, [judgment of 21/10/2021, 3 Ob 78/21y \(DE\)](#)
[Press release \(DE\)](#)*



Greece – Council of State

Public health - Compulsory self-tests for pupils and teachers - Conformity with the Constitution

In this case, the Council of State rejected as unfounded the appeals for excess of power lodged by 62 teachers and parents of primary and secondary school pupils against the ministerial order introducing an obligation to carry out COVID-19 self-tests. The court found that these measures comply with the Constitution, as they are aimed at addressing compelling reasons of public health and were adopted taking into account epidemiological and health data, the interest of children and the recommendations of expert committees, according to which these self-tests are a preventive measure, appropriate and necessary to create the safest possible conditions for the reopening of educational institutions.

Symvoulío tis Epikrateias, [judgments of 26/10/2021, Nos 1758-1759/2021 \(EL\)](#) (Link to the decision not available)



Spain – Constitutional Court

Public health - Deprivation of liberty - ‘State of alarm’

The Constitutional Court partially upheld an appeal for unconstitutionality and declared null and void certain principles of Royal Decree 926/2020, which established the second ‘state of alarm’ to contain the spread of infections caused by COVID-19.

This court declared unconstitutional the extension of the 6-month period provided for in the said decree as well as the designation of the delegated competent authorities. Conversely, it considered that the restriction of the movement of people at night, the restriction of the entry and exit of people in the autonomous communities and cities, as well as the restriction of groups of people in public and private spaces are in conformity with the Constitution.

Tribunal Constitucional, [judgment of 27/10/2021 No 183/2021 \(ES\)](#)



France – Constitutional Court

Protection of personal data - School head teachers’ access to pupils’ virological status

In a decision of partial non-conformity, validating the extension until 31 July 2022 of the state of health emergency and health crisis management regimes, the Constitutional Council censured the provisions relating to the access of school head teachers to health data concerning pupils. The provisions allowed not only access to the virological and vaccination status of pupils, but also to the existence of contacts with infected persons, as well as the processing of these data, without the prior consent of the pupils or their legal representatives. Moreover, the Constitutional Council noted that these data were accessible to school head teachers, but also to any person they authorised for this purpose. Finally, it considered that the legislator had not defined with sufficient precision the purposes pursued by the provisions.

*Conseil constitutionnel, [decision of 9/11/2021, No 2021-828 DC \(FR\)](#)
[Press release \(FR\)](#)*



Germany – Federal Constitutional Court

Public health - Measures restricting contact - Proportionate interference with fundamental rights

In order to curb the spread of COVID-19, German legislation had introduced measures limiting contact, such as a ban on certain private gatherings and a curfew, which were automatically implemented in a defined area once a certain incidence rate was reached. Failure to comply with these measures was punishable by a fine. The Federal Constitutional Court, while considering these measures as infringing the fundamental rights of the family and the free development of the personality of the persons concerned, judged them to be proportionate to the aims pursued, which were to protect the life and health of the population in the face of a pandemic and to ensure the smooth operation of the health care system.

Bundesverfassungsgericht, [judgment of 19/11/2021, 1 BvR 781/21 \(Bundesnotbremse I\) \(DE\)](#)

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



Germany – Federal Constitutional Court

Education - Ban on face-to-face classes - Proportionate interference with the right to education

German legislation had banned face-to-face classes in primary and secondary schools in a defined area above a certain incidence rate in order to curb the spread of COVID-19. The Federal Constitutional Court recognised for the first time that children and young people have a right to education from the State, based on a combined reading of the provisions of the Basic Law on the right to free development of the personality and State control of the school system, as well as Article 14 of the Charter of Fundamental Rights of the European Union and international law. It also found that the prohibition on attending such classes constitutes an infringement of this right, but that this is proportionate given that distance-learning classes are provided to pupils. This court also ruled that there was no infringement of the freedom to exercise one's profession, enshrined in the Basic Law, on the part of the pupils' parents.

*Bundesverfassungsgericht, [judgment of 19/11/2021, 1 BvR 971/21 \(Bundesnotbremse II\) \(DE\) / \(EN\)](#)
[Press release \(DE\)/\(EN\)](#)*



Belgium – Council of State

Culture - Complete closure of enclosed spaces in the cultural sector - Suspension of the measure

The Council of State suspended the measure to close down enclosed spaces in the cultural sector, due to the rapid spread of the 'Omicron' variant. According to the Council of State, this measure was not proportionate, as it was not based on adequate grounds for understanding why the attendance of cultural venues was particularly dangerous for the health of the population.

Particular attention was paid to the advice of the expert group, which had proposed a more gradual tightening instead of a sudden closure. The day after the decision of the Council of State, the competent authorities decided to reverse the closure of enclosed spaces in the cultural sector.

Conseil d'État, [judgment of 28/12/2021, No 252.564 \(FR\)](#)



Poland – Supreme Court

Health professionals - Access to health professions during the health crisis - Level of knowledge of the Polish language

The Supreme Court examined an appeal by the Minister for Health against the decision of the Supreme Medical Council to amend the resolution on the simplified procedure for access to the health professions during the health crisis. This resolution entitled people who had acquired their qualifications outside the European Union as health professionals and demonstrated 'sufficient' knowledge of the Polish language to work for a fixed period in Polish health care institutions. However, in the contested decision, the Higher Medical Council had opted for a stricter condition by imposing a 'thorough' knowledge of the Polish language. The Supreme Court decided to partially annul the decision of the High Medical Council by finding that 'sufficient' knowledge of the language is a satisfactory criterion and that, if necessary, the health care institution should guarantee access to an interpreter for its medical staff.

*Sąd Najwyższy, [judgment of 29/12/2021, 1 NO 26/21 \(PL\)](#) and [decision of the Higher Medical Council of 29/1/2021, 1/21/VIII \(PL\)](#)
[Press release \(PL\)](#)*