



## FLASH NEWS

3/22

# NATIONAL DECISIONS OF INTEREST TO THE EU

## OVERVIEW OF THE MONTHS FROM FEBRUARY 2022 TO MARCH 2022



### Austria – Supreme Court

#### **Protection of personal data - Regulation (EU) 2016/679 - Application allowing students to rate their teachers**

An Austrian national developed an application through which students can rate their teachers and schools by giving them stars in several categories (teaching, patience, respect, punctuality, preparation, etc.).

In response to a teacher's request to have his name and rating removed from the application, the Supreme Court ruled that the students' right to freedom of expression took precedence over the teacher's right to freedom of expression in this case. As a result, the said application was found to be compliant with Regulation (EU) 2016/679 on data protection.

Oberster Gerichtshof, [judgment of 2/2/2022, 6 Ob 129/21w \(DE\)](#)  
[Press release \(DE\)](#)



### Spain – Constitutional Court

#### **Fundamental rights - Prohibition of torture and inhuman or degrading treatment or punishment - Effective judicial protection**

The Constitutional Court upheld an appeal seeking to guarantee the protection of fundamental rights and freedoms against decisions to dismiss the case for an offence relating to degrading treatment of the applicant's person. She argued that, as a detainee, she had been subjected unnecessarily to a full body search with complete removal of her clothes. Given the fact that, in response to her complaint, there had not been a sufficient judicial investigation to clarify the facts, the Spanish high court ruled that the restoration of the claimant's rights required the annulment of the contested decisions so that the effective judicial protection claimed could be guaranteed.

Cour constitutionnelle, [judgment of 7/2/2022 No 2113/2020 \(ES\)](#)



### Italy – Constitutional Court

#### **Social security - Status of third-country nationals who are long-term residents - National legislation excluding, for the purpose of determining entitlement to a family benefit, members of the family of the holder of a single permit or of a long-term resident who do not reside in the territory of the State - Direct effect - Primacy of EU law - Inadmissibility**

According to the Constitutional Court, Articles 11(1)(d) of Directive 2003/109/EC and 12(1)(e) of Directive 2011/98/EU have direct effect. It therefore declared inadmissible the questions referred by the Court of Cassation following the preliminary rulings in Cases [C-302/19](#) and [C-303/19](#), which held that a national regulation on social security was not in conformity with EU law. It is precisely on these preliminary ruling cases that the said Court based its decision, holding that the principle of the primacy of EU law constitutes the foundation on which the 'community' of national courts rests, and that the preliminary ruling procedure helps to ensure and strengthen this primacy. The national courts participate in this through the mechanism of diffuse review, thus leaving any provisions of national law contrary to EU law unapplied where necessary.

Corte costituzionale, [judgment of 8/2/2022, Sent. No 67/2022 \(IT\)](#)  
[Press release \(IT\), \(EN\)](#)





### France – Council of State

#### **Environment - Directive 2011/92/EU - Assessment of the effects of plans and programmes on the environment - Authority responsible for examining the relevance of such an assessment**

The Council of State ruled that a decree designating the regional prefect as the authority responsible for case-by-case examinations to determine whether a project should be subject to an environmental assessment, including when he is competent to authorise the project, subject to situations of conflict of interest, is compatible with the objectives of Directive 2011/92/EU.

Conseil d'État, [decision of 16/2/2022, No 442607 \(FR\)](#)



### Poland – Constitutional Court

#### **Independence of judges - Judicial reform - Procedure for appointing judges - Disqualification**

In the context of judicial reform, the Supreme Court referred to the Constitutional Court the question of the conformity with the Constitution of national provisions concerning the disqualification of judges and the power of the Supreme Court to rule on the capacity of judges.

In this regard, the High Court deemed unconstitutional provisions that allow any circumstance related to the procedure for appointing a judge to be considered as a circumstance likely to raise a justified doubt as to the impartiality of that judge. It reached the same conclusion with regard to provisions allowing the disqualification of a judge in the event of a failure by the President of the Council of Ministers to countersign the announcement made by the President of the Republic of vacancies in the Supreme Court, which triggers the process of appointing judges, as well as those allowing the Supreme Court to rule on the capacity of a person appointed to the office of judge, on the competences to which such a judge is entitled, and on the effectiveness of judicial acts performed by the latter.

Trybunał Konstytucyjny, [judgment of 23/2/2022, P 10/19 \(PL\)](#)



### France – Constitutional Court

#### **Telecommunications - Obligation to retain connection data on a general and undifferentiated basis - Disproportionate interference with the right to privacy**

The Constitutional Council ruled that the legislative provisions, in their version prior to their amendment by Act No 2021-998 of 30 July 2021, providing for an obligation for telecommunications operators to retain, for a period of 1 year, the connection data of users for the purposes of the investigation, recording and prosecution of criminal offences, were not consistent with the Constitution. After noting that the said provisions were no longer in force, it ruled that the measures taken on their basis could not, however, be challenged on the basis of this unconstitutionality. In its view, calling these measures into question would be manifestly excessive with regard to the guarantee of public order and the objective of finding the perpetrators of offences.

Conseil constitutionnel, [decision of 25/2/2022, No 2021-976/977 QPC \(FR\)](#)  
[Press release \(FR\)](#)



### Sweden – Supreme Court

#### **Higher education entrance examination - Administrative and penal sanctions - Principle of ne bis in idem**

The Supreme Court examined whether the combination of an administrative decision of the Council of Universities and Higher Education Institutions and a criminal prosecution was in line with the requirements of the principle of ne bis in idem. In this case, a candidate for the entrance examination had his results cancelled and his participation in the examination suspended for cheating. Subsequently, criminal proceedings were initiated on the grounds of false declaration. On the basis of the so-called 'Engel criteria' (ECHR, 8 June 1976, Engel v. the Netherlands, No 5100/71), and as the proceedings did not concern the same offences, the Supreme Court annulled the decision of the Court of Appeal which had found a violation of the principle of ne bis in idem and referred the case back to the same court.

Högsta domstolen, [judgment of 3/3/2022, No Ö 2019-21 \(SV\)](#)  
[Press release \(SV\)](#)