



FLASH NEWS

2/22

MONITORING OF PRELIMINARY RULINGS

OVERVIEW OF THE MONTHS FROM DECEMBER 2021 TO FEBRUARY 2022



Sweden – Supreme Court

[Judgment in Braathens Regional Aviation, [C-30/19](#)]

Discrimination of air passengers - Right to a judicial review on the merits

The Supreme Court found that the airline Braathens Regional Aviation, which was accused of discriminating against a passenger, had agreed, following the preliminary ruling in Case C-30/19, to pay the compensation claimed by the Diskrimineringsombudsmannen (Discrimination Ombudsman, Sweden). It therefore recognised the existence of discrimination and upheld the claim categorically and unreservedly, in accordance with the Court's judgment. As the Ombudsman's appeal became devoid of purpose, his appeal was dismissed.

Högsta domstolen, [judgment of 21/12/2021, No Ö 2343-18 \(SV\)](#)
[Press release \(SV\)](#)



Romania – Constitutional Court

[Judgment in Euro Box Promotion and others, [C-357/19](#), [C-379/19](#), [C-547/19](#), [C-811/19](#) and [C-840/19](#)]

Primacy of Union law - Effects of judgments of the Constitutional Court

The Constitutional Court clarified the consequences of the judgments in Cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19 for its own judgments. The high court considered that, in accordance with the Constitution, its judgments are and remain binding in general terms. It stressed, however, that the Court's conclusions that the effects of the principle of primacy are binding on all the organs of a Member State, without domestic provisions, including constitutional provisions, being able to stand in the way, and that the national courts must disapply, on their own authority, any national regulation or practice that is contrary to a provision of Union law, imply a revision of the Romanian Constitution.

Curtea Constituțională, [Press release of 23/12/2021 \(RO\)](#)



Netherlands – Council of State

[Judgment in X (Vehicules-citernes GPL), [C-120/19](#)]

Inland transport of dangerous goods - Construction requirement

Relying on the judgment in Case C-120/19, the Council of State found that the requirement for an environmental permit imposed on a service station to be supplied with liquefied petroleum gas (LPG) only by tankers with a special thermal lining constitutes a construction requirement contrary to Article 5(1) of Directive 2008/68/EC.

The Council of State considered, inter alia, the applicability of the said requirement, which was, under national law, examined under the criterion of obviousness. This implies that the requirement of a final permit is inapplicable in the event of a clear contradiction with the rules of higher law, this criterion being, in this case, the only reason for the inapplicability of the requirement in question. While noting that the Court did not expressly answer the question of whether the said test can be applied when such a prescription is contrary to Union law, the Council of State held that it can be deduced from the Court's judgment that, in the present case, the examination can be limited to the criterion of obviousness, such that it annulled the decision imposing the aforementioned requirement.

Raad van State, [decision of 12/1/2022, 201705745/3/R4 \(NL\)](#)
[Press release \(NL\)](#)



Netherlands – Council of State

[Judgment in *M and others* (Transfer to a Member State), [C-673/19](#)]

Border controls, asylum and immigration - National enjoying international protection in another Member State - Detention for the purpose of transfer

In its judgment in Case C-673/19, the Council of State ruled that the Secretary of State was able to place a third-country national in administrative detention, given that this person was residing illegally in the Netherlands but had a right of residence in another Member State. Such detention is allowed when the person concerned refuses to go immediately to that other Member State and if a return decision cannot be adopted. In these circumstances, decisions to carry out forced transfer and detention are not governed by Directive 2008/15/EC but only by national law. According to the Council of State, the fundamental rights of the third-country national concerned were respected.

Raad van State, decision of 12/1/2022, 201810377/2/V3 (NL) Press release (NL)



Slovenia – Supreme Court

[Judgment in *Ministrstvo za obrambo, C-742/19*]

Social policy - Protection of the safety and health of workers- Concept of ‘working time’ - Members of the armed forces - On-call period

On appeal, the Supreme Court, relying on the judgment in *Ministrstvo za obrambo* (C-742/19), pointed out that the periods during which the applicant was on call as a member of the armed forces fell within the scope of Directive 2003/88/EC. The applicant remains solely at the disposal of his superiors, without actually carrying out any supervisory activity. Thus, such an on-call period imposed on the applicant implies that his continuous presence at his place of work must be considered as working time, given that this place is different from his home. The high court also considered that, with regard to his on-call periods, the applicant was entitled to payment of 100% of his basic salary.

Vrhovno sodišče Republike Slovenije, judgment and order of 1/2/2022, VSRS Sodba in sklep VIII Ips 196/2018 (SL) [the link to the text of the decision is not available] Press release (SL)

PREVIOUS DECISIONS



Poland – Supreme Court

[Judgment in *Format Urządzenia i Montaż Przemysłowe, C-879/19*]

Social security - Migrant workers - E 101 certificate

Following the judgment in Case C-879/19, in which the Court defined the concept of ‘person normally pursuing an activity as an employed person in several Member States’, referred to in Article 14(2) of Regulation (EEC) No 1408/71, the Supreme Court referred the case back to the District Court for a new decision. The latter will have to assess the periods of employment of the person concerned to determine whether they fall within the scope of the above-mentioned provision.

Sąd Najwyższy, judgment of 16/9/2021, II USKP 93/21 (PL)



Greece – Single-judge Regional Court of Lasithi

[Judgment in *M.V. and others* (Contrats de travail à durée déterminée successifs dans le secteur public), [C-760/18](#)]

Social policy - Measures to penalise the abuse of successive fixed-term employment contracts - Interpretation in conformity

The national court considers, by this judgment, that the useful effect of Directive 1999/70/EC can be ensured by the recognition of the nullity of successive contracts in combination with the right to compensation enshrined in the Greek legislation transposing that directive.

Therefore, the provisions of a previous regulation, still in force, allowing the conversion, in the private sector, of successive fixed-term contracts into a contract of employment of indefinite duration, were deemed inapplicable.

Monomeles Protodikeio Lasithiou., judgment of 20/1/2021, No 266/2021 (EL) [the link to the text of the judgment is not available]



Poland – Supreme Court

[Judgment in *Koleje Mazowieckie*, [C-120/20](#)]

Transport - Railway infrastructure charging - Damage resulting from incorrect transposition of a directive

This case concerns the damage resulting from an overpayment of a basic fee for the use of railway infrastructure due to the establishment of this fee on the basis of a national provision that incorrectly transposed Directive 2001/14/EC.

Following an appeal in cassation, the Supreme Court decided to annul the contested judgment and refer the case back to the court of second instance. Drawing consequences from the judgment in Case C-120/20, it asked the court, in essence, to determine first whether the costs in question had been validly contested before the national supervisory body and then to consider the liability of the State.

Sąd Najwyższy, [judgment of 17/11/2021, I CSKP 2/21 \(PL\)](#)

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'.