Newsletter

Week XVII - XVIII: 22nd April – 3rd May 2024

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Graziella Schembri assisted in the preparation of this Newsletter.

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All times are 9:30 unless otherwise

Week XVII 22nd to 26th April

Wednesday 24th April

General Court

Judgment in Case T-205/22 Naass et Sea-Watch v Frontex

(*Provisions governing the institutions – Access to documents*)

Sea-Watch is a non-profit humanitarian organisation based in Berlin (Germany), which conducts civilian search and rescue operations in the central Mediterranean.

In October 2021, Sea-Watch applied to the European Border and Coast Guard Agency (Frontex) for access to a list of documents. The documents in question all related to a Frontex air operation in the central Mediterranean which took place on July 30, 2021.

The type of documents varied between reports, communications, minutes as well as photographs and videos related to the operation.

Frontex refused access to a total of 73 documents identified as falling within the lists requested.

According to Frontex, the documents fell under an exception allowed by the Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents. Under this exception, Frontex would be entitled to refuse access if the disclosure of the document could materially or effectively undermine public security.

In addition, Frontex refused partial disclosure of the same documents on the grounds that the amount of information to be redacted would be disproportionate to the residual information that could be disclosed and that such a process would undermine the principle of good administration.

Background Documents T-205/22

There will be a press release for this case.

stated.

Don't forget to check the diary on our website for details of other cases.

Wednesday 24th April

General Court

Judgment in Case T-157/23 Kneipp v EUIPO-Patou (Joyful by nature)

(*Intellectual, industrial and commercial property – Trade marks)*

Kneipp is challenging a decision of Decision of the Second Board of Appeal of EUIPO of January 19, 2023 in Case R 532/2022-2, whereby the EUIPO refused an application for the word mark "Joyful by nature" with respect to a number of goods and services.

Kneipp GmbH has filed an application with the EUIPO to register the wordmark "Freudig von Natur aus". Jean Patou filed an opposition against this. This was upheld. The opposition was based on earlier rights from the registered trade mark "JOY".

It was decided that consumers would probably associate the newer trade mark with the earlier one.

Kneipp GmbH lodged an appeal against the decision and requested its complete cancellation. It argues that the signs can only be regarded as highly similar.

Background Documents T-157/23

There will be a press release for this case.

Thursday 25th April

Judgment in Cases C-420/22 NW (Classified Information) and C-528/22 PQ (Classified information)

(Area of freedom, security and justice – Fundamental Rights & Citizenship of the Union)

Two non-EU-country nationals of Turkish and Nigerian nationality have been legally resident in Hungary for several years. Both live with Hungarian nationals and have Hungarian children.

In two unreasoned opinions dated 2020 and 2021, the Office for the Protection of the Constitution found that their presence on Hungarian territory was detrimental to national security interests. This specialised body classified the data on which it based its opinion as classified information.

Following these opinions, the Police Authority responsible for foreigners withdrew the long-term resident status of the first person and rejected an application for a national settlement permit, submitted by the second person.

In addition, according to Hungarian regulations, the person concerned and his or her representative do not have the opportunity to express their views on an unmotivated decision by the competent bodies. Even though they can request access to classified information, the protection of the public interest takes precedence over their right to information. Moreover, even if they obtain access to such information, they may not use it in administrative or judicial proceedings.

The Court of Szeged (Hungary), before which these cases were brought, asks the Court of Justice about the compatibility of these rules of national legislation with EU law.

Background Documents C-420/22
Background Documents C-528/22

There will be one press release for these cases.

Thursday 25th April

Judgment in Joined Cases C-684/22 Stadt Duisburg (Loss of German citizenship), C-685/22 Stadt Wuppertal (Loss of German citizenship) and C-686/22 Stadt Krefeld (Loss of German citizenship)

(Citizenship of the Union)

Several Turkish nationals are challenging before a German court the loss of their German nationality, acquired through naturalisation in 1999. To become German, they had to renounce their Turkish nationality.

However, after their naturalisation in Germany, and more specifically after January 1, 2000, they again acquired Turkish nationality at their own request. By virtue of an amendment to German legislation coming into force on January 1, 2000, this recovery of Turkish nationality resulted in the automatic loss of German nationality.

The referring German court has doubts as to whether this automatic loss of German nationality is compatible with European Union law. Since the persons concerned do not possess the nationality of another Member State, it also entails the loss of EU citizenship and therefore of the right to move and reside freely throughout the EU.

The German court therefore referred the matter to the Court of Justice.

Background Documents C-684/22
Background Documents C-685/22
Background Documents C-686/22

There will be one press release for these cases.

Thursday 25th April

Opinion in Case C-446/21 Schrems (Communicating data to the public)

(Data protection)

The Austrian Supreme Court has referred questions in proceedings between Mr Maximilian Schrems – a user of the social network 'Facebook' – and Meta Platforms Ireland ("the defendant"), the company headquartered in Ireland, which manages Facebook, concerning the alleged unlawful processing of his personal data by said company.

Meta Platforms' business model is essentially to offer free social network services to its private users and to sell online advertising, including advertising targeted at its users. This advertising is mainly based on the automated creation of relatively detailed profiles of the social network's users.

In 2018, following the entry into force of the GDPR (Regulation (EU) 2016/679), Meta Platforms presented new Facebook terms of use to its users within the European Union to obtain their consent. The latter is required to be able to register or access the accounts and services provided by Facebook. The new terms of use also give users insight into and control over the data stored.

Mr Schrems accepted the new terms of use submitted by Facebook. He publicly stated that he was homosexual, but he never mentioned his sexual orientation and did not publish any sensitive data on his Facebook profile. Nor did he authorise the defendant to use, for the purposes of targeted advertising, the fields in his profile relating to his romantic situation, his employer, his job or his education.

Mr Schrems would regularly receive advertisements targeting homosexuals and invitations to corresponding events. These advertisements or invitations were not based directly on his sexual orientation and of his 'friends' on the social network, but on an analysis of their centres of interest. In addition, Meta Platforms would record all data relating to him, including that obtained via third parties or plugins, and store it for an indefinite period of time.

The referring court asks, *inter alia*, whether the GDPR principle of data minimisation (aiming to limit the collection of personal information to what is directly relevant and necessary to accomplish a specified purpose) allows personal data to be processed without any limitation in time or according to the nature of the data. Additionally, whether a person's comments, relating to his own sexual orientation, made during a round table discussion, authorise the processing of other data relating to that person's sexual orientation for the purposes of personalised advertising.

Background Documents C-446/21

There will be a press release for this case.

Thursday 25th April

Judgment in Case C-301/22 Sweetman

(Environment)

The Irish High court referred a number of questions concerning the obligation of the Member States to characterize and then classify the ecological status of the lakes within its territory in the application of Directive 2000/60/EC (EU Water Framework Directive).

The referring Court asks whether this responsibility covers all lakes, including the ones with a surface area of less than 0.5 km^2 (the minimum threshold). If this is answered in the negative, the High Court asks whether the directive creates any obligations on Member States to ensure the protection of such a water body when a development project is likely to affect it.

These questions follow the judgment of July 1, 2015, Bund für Umwelt und Naturschutz Deutschland (C-461/13), in which the Court held that, subject to the granting of a derogation, any deterioration in the status of a body of water must be avoided, irrespective of the longer-term planning provided for by management plans and programmes of measures.

The dispute between M. Peter Sweetman and An Bord Pleanála (the Agency) stems from the authorization granted by the Agency to the Bradán Beo Teoranta company to extract fresh water from Loch an Mhuilinn, under specific conditions and in specific amounts.

The plan was for the water to be pumped from the lake, through a pipeline, to bathe sick salmon to rid them of amoebic gill disease and sea lice. The lake in question is a private inland non-tidal lake located on Gorumna Island, County Galway, Ireland, with a surface area of 0.083 km^2 or 8.3 hectares. It had not been identified by the Environmental Protection Agency (EPA) as a body of water covered by the Water Directive, because it did not meet the criteria relating to surface area or location in a protected area. As a result, the EPA had not classified the lake's ecological status.

Mr Sweetman appealed against this decision to the High Court, arguing that, by authorizing the development project, the Agency had breached its obligation to take the necessary measures to prevent deterioration in the status of this body of surface water.

Background Documents C-301/22

There will be an Info Rapide for the case (available on request).

Week XVIII 29th April to 3rd May

Tuesday 30th April

Judgment in Case C-470/21 La Quadrature du Net and Others (Personal data and the fight against counterfeiting)

(Approximation of laws – Telecommunications – Fundamental rights)

A French decree has introduced two automated processes for personal data to protect certain intellectual works on the Internet. The first process is activated upstream by sworn agents, while the second is carried out by Internet service providers at the request of the *Haute autorité pour la diffusion des œuvres et la protection des droits sur internet* ("HADOPI").

In both cases, those automated processes enable this independent public authority to send to identified individuals some recommendations, which are aimed at combating counterfeiting on the Internet, as part of a so-called "graduated response" procedure (combining educational and repressive measures).

However, this processing is not subject to any prior control by a court or independent administrative authority. In 2019, four associations for the protection of rights and freedoms on the Internet (La Quadrature du Net, the Fédération des fournisseurs d'accès à Internet associatifs, Franciliens.net and the French Data Network) unsuccessfully asked the French Prime Minister to annul this decree.

The associations consider the restriction on fundamental rights, entailed by a public authority accessing civil identity data corresponding to an IP address, not to be compatible with EU law. They therefore referred the matter to France's Conseil d'État.

The latter is questioning the compatibility with EU law not only of the collection of civil identity data corresponding to IP addresses, but also of the automated processing of such data to prevent infringements of intellectual property rights.

Background Documents C-470/21

There will be a press release for this case.

Tuesday 30th April

Judgment in Case C-178/22 Procura della Repubblica presso il Tribunale di Bolzano

(Approximation of laws – Telecommunications)

As part of a criminal investigation into the theft of two mobile phones, the Bolzano Public Prosecutor's Office asked the Italian judge (District Court, Bolzano) to be authorised to collect the telephone records of the stolen phones from all the telephone companies in order to identify those responsible for the theft. That would make it possible, *inter alia*, to trace and identify the source and destination of communications from mobile telephones.

However, the Italian judge considered that the prosecution of this offence, which caused a limited social disturbance, did not justify such an invasion of privacy.

The District Court, Bolzano referred questions to the Court of Justice in light of the EU Directive on privacy and electronic communications (Directive 2002/58/EC).

This directive indeed enables the Member States to introduce legislative exceptions to the obligation, laid down in that directive, to ensure the confidentiality of electronic communications. In previous case law (C-746/18 Prokuratuur), the Court held that access to data that enables precise conclusions to be drawn concerning a user's private life, pursuant to measures adopted under Directive 2002/58, constitutes a serious interference with the fundamental rights and principles enshrined in the Charter of Fundamental Rights of the European Union.

Such access may not be authorised for the purposes of the prevention, investigation, detection and prosecution of 'criminal offences in general'. It may be granted only in procedures and proceedings to combat 'serious crime' and must be subject to prior review by a court or independent administrative body to ensure compliance with that requirement.

The District Court, Bolzano asks the Court to clarify two aspects of the judgment in Prokuratuur: the concept of 'serious crime' and the scope of the prior review that a court must carry out under a provision of national law that requires it to authorise access to data retained by providers of electronic communications services.

Background Documents C-178/22

There will be a press release for this case.

Tuesday 30th April

Judgment in Case C-670/22 M.N. (EncroChat)

(Area of Freedom, Security and Justice – Judicial cooperation in criminal matters)

With the help of Dutch experts and the authorisation of a French court, the French police managed to infiltrate the EncroChat encrypted telecommunications service, offering its users near-perfect anonymity. This service was used worldwide on encrypted mobile phones for illegal drug trafficking.

Via a Europol server, the German Federal Criminal Police Office was able to consult the intercepted data, which concerned EncroChat users in Germany.

Following European investigation decisions issued by the German Public Prosecutor's Office (Frankfurt), the French court authorised the transmission of this data and its use in criminal proceedings in Germany.

The Berlin Regional Court, seized of such proceedings, questioned the legality of these European investigation decisions. It therefore referred a series of questions to the Court of Justice for a preliminary ruling on the Directive on the European Investigation Order in criminal matters (Directive 2014/41/EU), regulating the European Investigation Order (EIO), an EU instrument that enables cross-border cooperation in criminal investigations.

The present reference results from one of the criminal proceedings initiated before the Regional Court, Berlin, Germany against M.N. based on intercepted telecommunications data transferred on the basis of the abovementioned EIOs. The question that arose before the referring court is whether the EIOs were issued in breach of the EIO Directive, and if so, what consequences that may have for the use of such evidence in the criminal procedure.

The present reference invites the Court, for the first time, to interpret that directive in a situation where an EIO was issued for the transfer of evidence already in the possession of another State.

Background Documents C-670/22

There will be a press release for this case.

Tuesday 30th April

Opinion in Case C-650/22 FIFA

(Charter of Fundamental Rights – Freedom of movement for workers)

A former professional footballer is challenging the rules governing contractual relations between players and clubs. The rules in question, entitled 'Regulations on the Status and Transfer of Players' (RSTP), were adopted by the Fédération Internationale de Football Association (FIFA) – an association responsible for organising football competitions at world level.

These rules that are implemented, both by FIFA and by its member national football associations apply among other things, to a situation where a player has had his contract terminated without just cause by a club. In such cases, that player and any club wishing to employ him are jointly and severally liable for any compensation due to his former club. The player and club are also liable to sporting and financial sanctions in case of non-compliance. Furthermore, the association to which the player's former club belongs may refuse to deliver an International Transfer Certificate to the new association where the player's new club is registered as long as the dispute with the former club is standing.

The professional football player had signed for the Russian football club Lokomotiv Moscow only to have that contract terminated one year later for an alleged breach "and termination of contract without just cause". Lokomotiv Moscow applied to the FIFA Dispute Resolution Chamber for compensation and the player submitted a counterclaim seeking compensation of unpaid wages. The player claims that the search for a new club proved to be difficult because under the RSTP, any new club would be held jointly and severally liable with himself to pay any compensation due to Lokomotiv Moscow. He claims that a potential deal with Belgian club Sporting du Pays de Charleroi fell through because of the RSTP conditions and he sued FIFA and URBSFA (the governing body for Belgian football) before a Belgian court for damages and loss of earnings of €6 million.

The Court is being asked to examine whether the FIFA rules governing contractual relations between players and clubs are contrary to the European Union rules on competition and freedom of movement of persons.

Background Documents C-650/22

There will be a press release for this case.

HEARINGS OF NOTE*

Court of Justice

Monday 22nd April: **14:30** – Case C-382/22 P Cathay Pacific Airways v Commission (Competition)

Monday 22nd April: **16:30** – Case C-381/22 P Japan Airlines v Commission (Competition)

Tuesday 23rd April: **09:00** Case C-233/23 Alphabet and Others (Competition)

Wednesday 24th April: 09:30 Case C-205/23 Engie Romania (Energy)

General Court

Thursday 25th April: 09:30 – Case T-570/22 Herbert Smith Freehills v Commission and Case T-311/23 British American Tobacco Polska Trading v Commission (Provisions governing the institutions – Access to documents)

Thursday 25th April: 09:30 – Case T-790/22 MeSoFa v BCE (Economic and monetary policy)

Thursday 25th April: **14:30** – Case T-632/22 MeSoFa v BCE (Economic and monetary policy)

Tuesday 30th April: 09:30 – Case T-607/22 and T-731/22 Kozitsyn v Council (Restrictive measures – Ukraine)

* This is a non-exhaustive list and does not include all the hearings over the next two weeks.