



## Newsletter

Weeks IV-V : 23<sup>rd</sup> January to 3<sup>rd</sup> February 2023

### Contact us

Jacques René  
Zammit  
+352 4303 3355

EN Desk Email  
Press.ENdesk@curia.europa.eu

Follow  
@EUCourtPress  
on Twitter

\*\*\*

Download our  
app



\*\*\*

All times are 9:30  
unless otherwise  
stated.

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

**Anna Rizzardi**  
contributed to  
this edition of the  
Newsletter.



## Week IV – 23<sup>rd</sup> to 27<sup>th</sup> January

### Wednesday 25<sup>th</sup> January

#### General Court

#### [Judgment in Case T-163/21 De Capitani v Council](#)

(Access to Documents)

Mr De Capitani had applied for access to certain documents relating to a legislative procedure on annual financial statements. However, the Council had refused access to certain documents on the grounds that their disclosure would seriously undermine the Council's decision-making process. Following this, the Council confirmed its refusal to grant access with a decision of 14 January 2021.

The applicant then filed an action for annulment of this decision before the General Court. The legal issue at stake concerns the relationship between on the one hand, the need to protect the decision-making process of an institution and, on the other hand, the right of access to documents enshrined in the TFEU and the Charter of Fundamental Rights of the European Union.

#### [Background Documents T-163/21](#)

**There will be a press release in this case.**

### Thursday 26<sup>th</sup> January

#### [Judgment in Case C-205/21 Ministerstvo na vatreshnite raboti \(\(Registration of biometric and genetic data by the police\)](#)

(Area of Freedom, Security and Justice)

In the context of criminal proceedings for tax evasion initiated by the Bulgarian authorities, V.S. was indicted for her alleged participation in an organised criminal group, formed for the purpose of enrichment, with a view to committing crimes on

Weeks IV-V: 23<sup>rd</sup> January to 3<sup>rd</sup> February 2023

Bulgarian territory in a concerted manner. Following the indictment, the Bulgarian police invited V.S. to submit to police registration. However, V.S. objected to the collection of her fingerprint and photographic data for registration and to the taking of her DNA profile.

On the basis of national legislation providing for police registration of persons indicted for an intentional criminal offence prosecuted ex officio, the police authorities applied to the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria) for authorisation to enforce the collection of V.S.'s DNA and biometric data. Only copies of his indictment and the statement of his refusal to collect his data accompanied the police authorities' request.

The court had doubts about the compatibility of the Bulgarian legislation on police registration with Directive 2016/680, read in the light of the Charter of Fundamental Rights of the European Union, and therefore referred the matter to the Court for a preliminary ruling.

### [Background Documents C-205/21](#)

**There will be a press release in this case.**

## Thursday 26<sup>th</sup> January

### [Opinion in Case C-817/21 \*Inspekția Judiciară\*](#)

(Principles of Community law)

The *Inspekția Judiciară* (Judicial Inspection, Romania) is the judicial body responsible for the conduct of disciplinary investigations and the commencement of disciplinary proceedings against judges and prosecutors in Romania. Under the rules governing the Judicial Inspection, the Chief Inspector appoints the Deputy Chief Inspector at his or her sole discretion; the term of office of the Deputy Chief Inspector depends upon and coincides with that of the Chief Inspector; and all Judicial Inspectors are subordinate to the Chief Inspector upon whom the progress of their careers depends.

R.I. made several complaints against judges and prosecutors engaged in criminal proceedings against her to the Judicial Inspection. The Judicial Inspection dismissed her complaints. The Chief Inspector confirmed the decisions of the Judicial Inspection. The applicant proceeded to challenge those decisions before the courts of Romania.

In the context of those proceedings the *Curtea de Apel București* (Court of Appeal, Bucharest, Romania) seeks to ascertain whether a body, such as the Judicial Inspection, must offer the same guarantees of independence and impartiality as are required of courts under EU law. In particular, it asks whether, in the light of the rules described above, EU law precludes national legislation or regulations that make the

Weeks IV-V: 23<sup>rd</sup> January to 3<sup>rd</sup> February 2023

Deputy Chief Inspector of the Judicial Inspection responsible for overseeing the investigation of complaints made against the Chief Inspector of the Judicial Inspection and any disciplinary investigations and proceedings that might arise therefrom.

[Background Documents C-817/21](#)

**There will be a press release in this case.**

## Week V- 30<sup>th</sup> January to 3<sup>rd</sup> February

### Tuesday 31<sup>st</sup> January

[Judgment in Case C-158/21 Puig Gordi e.a.](#)

(Area of Freedom, Security and Justice)

This request for a preliminary ruling concerns the interpretation of a number of provisions of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009.

The referring court asks the Court of Justice a series of questions designed, essentially, to establish whether an executing judicial authority may refuse to execute a European arrest warrant on grounds of the alleged lack of competence of the issuing judicial authority to issue such a warrant and the alleged lack of jurisdiction of the court called upon to try the person charged, and whether Framework Decision 2002/584 precludes the issue of a new European arrest warrant after the execution of a first European arrest warrant has been refused.

Those questions have arisen in connection with the prosecution of former Catalan leaders following a referendum, held on 1 October 2017, concerning self-determination for the Autonomous Community of Catalonia (Spain). European arrest warrants have been issued for a number of those defendants who left Spain at the end of 2017. Those warrants have not been executed, either because a number of the defendants in question were elected to the European Parliament or because of controversy surrounding the criminal proceedings in question. In so far as concerns the case under consideration, that controversy concerns the rules establishing the jurisdiction of the Tribunal Supremo (Supreme Court, Spain) to try the defendants, those rules applying, inter alia, on the basis of the place where the offences were committed and on the connection between the offences with which the defendants are charged.

More specifically, this request for a preliminary ruling has arisen from the refusal of

Weeks IV-V: 23<sup>rd</sup> January to 3<sup>rd</sup> February 2023

the Belgian courts to give effect to the European arrest warrant issued against Mr Lluís Puig Gordi. The appellate court which gave a final ruling in the matter based its refusal on the existence of a risk of infringement of the right to be tried by a tribunal established by law, in that it found there to be no express legal basis conferring jurisdiction on the Tribunal Supremo (Supreme Court) to try Mr Puig Gordi. It also held that the likelihood of the presumption of innocence being breached was also to be taken very seriously. Although that refusal directly concerns Mr Puig Gordi alone, the referring court's request is presented as a means of determining what decisions should be taken with regard to all of the defendants.

### [Background Documents C-158/21](#)

**There will be a press release in this case.**

## Tuesday 31<sup>st</sup> January

### [Judgment in Case C-284/21 P Commission / Braesch e.a](#)

(State Aid)

In 2008, the Italian bank Banca Monte dei Paschi di Siena (BMPS) carried out a capital increase of 950 million euros reserved to J.P. Morgan Securities Ltd (JPM). JPM obtained the funds necessary to finance this transaction from Mitsubishi UFJ Investor Services & Banking (Luxembourg) SA, which issued 1 billion euros of bonds for this purpose. In 2016, the Italian authorities set out the legal framework for liquidity aid and precautionary recapitalisations and, in 2017, they notified the Commission of aid for the recapitalisation of BMPS of 5.4 billion euros, accompanied by a restructuring plan and commitments. This aid was in addition to an individual liquidity support of 15 billion euros in favour of BMPS.

By decision of 4 July 2017, the Commission approved both the liquidity support and the aid for the preventive recapitalisation. These aid measures were considered to constitute State aid compatible with the internal market on grounds of financial stability.

However, since the BMPS restructuring plan entailed the cancelation of the contracts between BMPS and JPM, some bondholders brought actions before the General Court seeking the annulment of the Commission's decision. In particular, those applicants argued that they had suffered substantial economic loss as a result of the restructuring plan accompanying the aid measures.

Before entering on the merits of this claim, the Commission raised a plea of inadmissibility on the ground that the applicants had neither an interest in bringing proceedings nor standing. The General Court rejected this plea of inadmissibility,

Weeks IV-V: 23<sup>rd</sup> January to 3<sup>rd</sup> February 2023

holding that the Commission's decision was of direct and individual concern to applicants as both 'parties concerned' and 'interested parties'.

Therefore, the Commission appealed the General Court's judgment to the Court of Justice. In allowing this appeal, the Grand Chamber of the Court clarifies the concept of "interested party" within the meaning of Article 108(2) TFEU.

[Background Documents C-284/21 P](#)

### Thursday 2<sup>nd</sup> February

[Judgment in Case C-372/21 Freikirche der Siebenten-Tags-Adventisten in Deutschland](#)

(Freedom to provide services)

Freikirche der Siebenten-Tags-Adventisten in Deutschland KdÖR (Free Church of the Seventh-day Adventists in Germany; 'the appellant') is a religious society recognised in Germany, where it has the status of a body governed by public law. It does not have the same status in Austria.

In 2019, the appellant recognised as a denominational school a private institute in Austria which was being run by a private association – combining primary and middle school – and introduced a request for public funding of its staff pursuant to the provisions of the PrivSchG. By decision of 3 September 2019, the Bildungsdirektion für Vorarlberg (Directorate of Education of Vorarlberg, Austria) rejected that request.

The appellant brought an appeal against that decision. However, that appeal was dismissed as unfounded by judgment of 26 February 2020 of the Bundesverwaltungsgericht (Federal Administrative Court, Austria). That court found that the school in question did not possess the special legal status granted to 'denominational' schools within the meaning of Paragraph 18 of the PrivSchG, since the appellant was not legally recognised in Austria as a church or religious society. It thus concluded that the requirements of Paragraph 17 et seq. of the PrivSchG were not met.

The appellant brought an appeal on a point of law against the judgment of the Bundesverwaltungsgericht (Federal Administrative Court) before the Verwaltungsgerichtshof (Supreme Administrative Court, Austria). That court, harbouring doubts as to the compatibility of the relevant national legislation ('the national legislation at issue') with EU law, decided to stay the proceedings and to refer the questions to the Court of Justice.

[Background Documents C-372/21](#)

---

# Newsletter

Weeks IV-V: 23<sup>rd</sup> January to 3<sup>rd</sup> February 2023

**There will be a press release in this case.**

