# Newsletter

**Weeks XVI - XVII: 17th to 28th April 2023**

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All times are 9:30 unless otherwise stated.

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

## Week XVI – 17th to 21st April

### Tuesday 18th April

**Judgment in Case C-699/21 E. D. L. (Motif de refus fondé sur la maladie)**

(Area of Freedom, Security and Justice)

On September 9, 2019, the Municipal Court of Zadar (Croatia) issued a European arrest warrant for E. D. L., who resides in Italy, for the purpose of criminal prosecution in Croatia.

Following a psychiatric examination, the Court of Appeal of Milan, which was competent to execute the arrest warrant, found that E. D. L. had a psychotic disorder requiring the continuation of medical and psychotherapeutic treatment, and that there was a significant risk of suicide in the event of imprisonment. It considered, on the one hand, that the execution of the European arrest warrant would interrupt E.D.L.'s treatment and lead to a deterioration in his general state of health, the effects of which could be exceptionally serious, and even to a proven risk of suicide. It also noted that the Italian provisions transposing the Framework Decision on the European arrest warrant do not provide for health reasons of this type to be a reason for refusing surrender. It therefore asked the Italian Constitutional Court about the constitutionality of these provisions.

Taking the view that the case concerns not only the compatibility of those provisions with the Italian Constitution but also the interpretation of the Union law of which they are the implementation, the Italian Constitutional Court referred the matter to the Court of Justice. Since the refusal to surrender the person sought is not provided for in the event of a chronic medical condition of potentially indefinite duration, the Italian Constitutional Court asks the Court how to prevent the risk of serious damage to that person's health, the conditions of which are likely to deteriorate appreciably in the event of surrender.

In particular, it asks whether the executing judicial authority must request information from the issuing judicial authority that would make it possible to rule out such a risk, and whether it must refuse surrender if it does not obtain, within a reasonable period

of time, the assurances required to rule out this risk.

**Background Documents C-699/21**

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

## Tuesday 18th April

**Judgment in Case C-1/23 PPU Afrin**

(Area of Freedom, Security and Justice)

Ms. X and Mr. Y, Syrian nationals, were married during 2016 in Syria. They had two children, born in 2016 and 2018 respectively.

During 2019, Mr. Y left Syria to travel to Belgium while Ms. X and their two children remained in the city of Afrin, located in northwestern Syria, where they are still currently located. On August 25, 2022, the Belgian administration recognized Mr. Y as a refugee in Belgium.

In September 2022, Ms. X and her children's lawyer submitted an application for entry and residence under the family reunification scheme on behalf of the children by email and letter, so that they could join Mr. Y in Belgium. According to their lawyer, Ms. X and her children are in "exceptional conditions that effectively prevent them from going to a Belgian diplomatic post in order to submit an application for family reunification", as required by Belgian law.

On September 29, 2022, the Foreigners' Office replied that, according to Belgian law, it was not possible to submit an application for entry and residence for the purpose of family reunification by e-mail and invited Ms. X and her children to contact the competent Belgian embassy.

On 9 November 2022, Ms X, Mr Y and their children brought an action against the Belgian State before the French-speaking Court of First Instance in Brussels in order to have their application for family reunification registered. In that regard, they argued that, given the impossibility for Ms X and her children to go to a competent Belgian diplomatic post, an application to the Foreginers' Office should be accepted under Union law. That court asks the Court of Justice whether Union law precludes legislation such as the Belgian legislation at issue.

**Background Documents C-1/23 PPU**

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

## Thursday 20th April

**Judgment in Case C-348/22 Autorità Garante della Concorrenza e del Mercato (Commune de Ginosa)**

(Freedom to provide services)

According to Union law, in order to grant concessions for the occupation of the public maritime domain, Member States must apply a selection procedure between potential candidates when the number of authorizations available for a given activity is limited due to the scarcity of natural resources. The authorisation should be granted for an appropriate limited period and should not be subject to an automatic renewal procedure. Although these rules have been transposed into the Italian legal order, a 2018 law indicated that current concessions would be extended until December 31, 2033, in order to have the time necessary to carry out all the operations required for the reform of concessions.

In accordance with this law, the municipality of Ginosa, by decision of December 24, 2020, extended the concessions for occupying the public maritime domain in its territory. Considering that this decision was contrary to the principles of competition and freedom of establishment, the Competition and Market Authority (AGCM) notified the municipality of a reasoned opinion, reminding it of the requirement for a prior public procurement procedure and noting that the national provisions automatically extending the concessions should not be applied.

Since the Municipality of Ginosa did not comply with the opinion, AGCM brought an action before the Regional Administrative Court of Puglia for the annulment of the decision of the Municipality of Ginosa. The Regional Administrative Court of Puglia, while considering the national provisions to be incompatible with Directive 2006/123 on services in the internal market, doubts the self-executing nature of the directive and the preclusive effect of the contrary national rules

Moreover, it does not share the opinion of the Italian Council of State that Directive 2006/123 is a liberalization directive and not a harmonization directive. The Apulia Regional Administrative Court concludes that the directive should have been adopted unanimously and not by a majority of the votes of the Council.

The Regional Administrative Court of Apulia therefore referred a number of questions to the Court of Justice for a preliminary ruling on the scope of the directive, its validity, its nature and the effects of its application.

**Background Documents C-348/22**

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

## Thursday 20th April

**Judgment in Joined Cases C-775/21 Blue Air Aviation & C-826/21 UPFR**

(Approximation of Laws)

Two Romanian organizations for the collective management of copyright and related rights in the field of music brought actions against the air carrier Blue Air and against CFR, a Romanian rail transport company, respectively, seeking payment of outstanding remuneration and penalties for the unlicensed broadcasting of musical works on board aircraft and passenger coaches.

In these cases, the Bucharest Court of Appeal asked the Court of Justice:
- whether the broadcasting, inside a commercial aircraft occupied by passengers, of a musical work or an excerpt from a musical work at the time of take-off, landing or at any other time during the flight, by means of the general public address system of the aircraft, constitutes a communication to the public;

- whether a rail transport operator who uses railroad carriages equipped with public address systems in order to be able to communicate information to passengers makes a communication to the public.

**Background Documents C-775/21**
**Background Documents C-826/21**

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

## Thursday 20th April

**Opinion in Case C-621/21 Intervyuirasht organ na DAB pri MS (Femmes victimes de violences domestiques)**

(Area of Freedom, Security and Justice)

Directive 2011/95 on international protection sets out the conditions for granting refugee status and subsidiary protection to third-country nationals. The grounds for obtaining refugee status include persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group. The directive also specifies that subsidiary protection is provided for any third-country national who does not qualify as a refugee, but for whom there are substantial grounds for believing that, if returned to his or her country of origin, he or she would run a real risk of suffering serious harm. These include the death penalty, execution, torture or inhuman or degrading treatment or punishment.

The Sofia Administrative Court had doubts about the possibility and type of

international protection to be granted to a divorced Turkish national of Kurdish origin and Muslim (Sunni) faith, particularly in view of the nature of the violence to which she might be exposed if she returned to her country of origin. This woman was forcibly married and, following numerous episodes of domestic violence and threats from both her husband and her biological and in-laws family, she was forced to leave the marital home. She entered into a religious marriage with another man in 2017, a year before the divorce from her first husband was finalized. She is currently in Bulgaria and maintains before the competent authorities that she fears for her life if she were to return to Turkey.

**Background Documents C-621/21**

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

## Weeks XVII – 24th to 28th April

### Wednesday 26th April

**General Court**

**Judgment in Case T-54/21 OHB System v Commission**

(Procurement)

By contract notice of 15 May 2018 , the European Space Agency (ESA), acting for and on behalf of the Commission, had launched a tender procedure for the supply of transitional satellites in the context of the Galileo programme, which aims to set up and operate a European satellite navigation and positioning system for civil purposes.

This procedure was launched as a competitive dialogue, since the Commission had already identified and defined its needs, but had not yet defined the precise means best suited to meet them. ESA was responsible for organising the tendering procedure, while the Commission remained the contracting authority. It was decided that two successful tenderers could be selected and that the contract would be awarded on the basis of the most economically advantageous tender
.
At the end of the first phase of the competitive dialogue, inviting applications to participate, ESA selected three bidders, namely OHB System AG, the applicant, Airbus Defence and Space GmbH (ADS) and Thales Alenia Space Italia (TASI). Following the second phase, which aimed at identifying and defining the means to satisfy the needs of the contracting authority, and the third phase, during which ESA invited the bidders to submit their "final offers", the final offers were evaluated by an evaluation committee which presented its results in an evaluation report.

On the basis of that report, the Commission took the decision not to accept the applicant's tender and to award the contract to TASI and, which were communicated to the applicant by letter of 19 January 2021.

Prior to the adoption of the Contested Decisions, the Applicant had, by letter of December 23, 2020, informed the Commission and ESA that one of its former employees, an administrative general manager, who had had extensive access to project data and had participated in the preparation of its bid, had been hired in December 2019 by ADS.

It argued that there were indications that this former employee had obtained sensitive information and that a national criminal investigation had been opened, following a complaint it had filed against him. It therefore asked the Commission to suspend the disputed competitive dialogue, to investigate the matter and, if necessary, to exclude ADS from the dialogue.

By letter of 20 January 2021, the Commission informed the applicant that there were insufficient grounds to justify such a suspension and that, since the allegations were being investigated by the national authorities, in the absence of a final judgment or a final administrative decision concerning them, there were no grounds for excluding ADS from the contested competitive dialogue.

An action for annulment of the contested decisions was brought before the General Court.

**Background Documents T-54/21**

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

## Thursday 27th April

**Opinion in Case C-340/21 Natsionalna agentsia za prihodite**

(Approximation of Laws)

Can the unlawful dissemination of personal data held by a public agency, due to a hacking attack, give rise to compensation for moral damage in favor of a data owner merely because the data owner has a fear of possible future misuse of its data? What are the criteria for imputing liability to the data controller? How are the evidentiary burdens distributed within the judgment? What is the extent of the judge's scrutiny?

**Background Documents C-340/21**

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