



Newsletter

Week XVI - XVII: 15th – 26th April 2024

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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 15th to 19th April

Wednesday 17th April

General Court

[Judgment in Case T-255/23 Escobar v EUIPO \(Pablo Escobar\)](#)

(Intellectual Property – Trade marks)

Escobar Inc. is a company founded by Roberto de Jesús Escobar Gaviria, the brother of Pablo Emilio Escobar Gaviria, also known as Pablo Escobar. It manages and owns all the intellectual property relating to Pablo Escobar, such as copyrights, trademarks and other rights. It is devoted to stop unauthorized use and exploitation of the person of Pablo Escobar by third parties unrelated to him.

The EUIPO examiner refused an application by Escobar Inc to register the trademark “Pablo Escobar”. The application was qualified as being contrary to morality as well as to public policy.

Escobar Inc. is challenging the decision of the EUIPOs Fifth Board of Appeal that had confirmed the examiner’s decision.

[Background Documents T-255/23](#)

There will be a press release for this case.

Thursday 18th April

[Judgment in Case C-605/21 Heureka Group \(Online price comparison\)](#)

(Competition – Dominant position)

The reference for a preliminary ruling was made in proceedings between the Czech undertaking Heureka Group a.s. and Google LLC concerning an action for damages for an abuse of a dominant position within the meaning of [Article 102 TFEU](#).

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The action at issue was initiated by Heureka on 26 June 2020, following the Commission's decision of 27 June 2017 in the Google Search (Shopping) case (see [summary](#) of the decision). In that decision, the Commission found that Google had committed an infringement of Article 102 TFEU in that, on its search results pages, it displayed its own price comparison service more favourably than competing services. The Commission noted that the infringement had been taking place in the Czech Republic since February 2013.

Heureka, being an operator of a price comparison service, seeks compensation for damage suffered in the form of loss of revenue, amounting to CZK 394,857,000 (approximately € 15,600,000), over the period from February 2013 until the Commission's decision was issued on June 27, 2017.

During the proceedings before the referring court, Google raised a plea of limitation. It argued that the three-year subjective limitation period provided for under Czech law had begun to run gradually from February 2013, as Heureka had been able to become aware of two circumstances that were decisive for triggering that period, namely the existence of the damage and the identity of its perpetrator, from the outset of the infringement.

The referring court, having doubts as to the interpretation of the limitation rules as set out in the Damages Directive ([Directive 2014/104](#)), and as to the conformity of the national legislation with that directive, decided to stay proceedings and to refer a question to the Court for a preliminary ruling.

[Background Documents C-605/21](#)

There will be a press release for this case.

Thursday 18th April

[Judgment in Case C-359/22 Minister for Justice \(Discretionary clause – Appeal\)](#)

(Area of freedom, security and justice – Asylum policy)

The Irish High Court asked for guidance concerning the interpretation of the application of [Regulation \(EU\) No 604/2013](#) (the "Dublin III Regulation"), particularly with reference to Articles 17, 27 and 29, as well as [Article 47](#) of the Charter of Fundamental Rights of the European Union (the "Charter") on a case initiated by AHY, a Somali national.

The application was made in the context of a dispute between AHY and the Irish Minister for Justice (the "Minister") concerning the latter's decision refusing to exercise his discretion under Article 17 of the Dublin III Regulation to consider AHY's application for international protection and indicating he would be transferred to Sweden.

On January 21, 2020, AHY applied for international protection in Ireland.

From a Eurodac search for the comparison of fingerprints ([Regulation \(EU\) No 603/2013](#)), it emerged that he had already made two applications for international protection in Sweden – in November 2012 and October 2017. Both applications had been rejected.

The Irish authorities requested to Sweden to take back AHY. Sweden accepted the request on February 19, 2020.

On July 23, 2020, AHY was notified of the decision of International Protection Office (“IPO”) to transfer him to Sweden.

On August 5, 2020, AHY appealed against this decision to the International Protection Appeals Tribunal, requesting the application of the discretionary clause provided for in Article 17 of the Dublin III Regulation.

The International Protection Appeals Tribunal rejected this appeal on the October 5, 2021.

AHY applied to the Minister on November 15, 2021 for the exercise of the discretion referred to in the above-mentioned Article 17.

The request was rejected on February 16, 2022 prompting AHY’s appeal against the Minister’s decision to the referring court.

[Background Documents C-359/22](#)

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

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 that 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.

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" in respect of 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 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 asks reference for a preliminary ruling 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 by that company of his personal data.

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, a Facebook user, 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 Directive).

The referring Court asks whether this responsibility covers all lakes, including the ones with a surface area of less than 0.5 km² (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 on from the judgment of 1 July 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 km² 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).

HEARINGS OF NOTE*

Court of Justice

Wednesday 17th April: **09:00** – Case [C-401/22 P Cargolux Airlines v Commission](#) (Competition)

Wednesday 17th April: **11:00** – Case [C-378/22 P British Airways v Commission](#) (Competition)

Thursday 18th April: **15:00** – Case [C-369/22 P Air France v Commission](#) and Case [C-370/22 P Air France-KLM v Commission](#) (Competition)

Friday 19th April: **9:00** – Case [C-403/22 P SAS Cargo Group and Others v Commission](#) (Competition)

Friday 19th April: **11:00** – Case [C-385/22 P Koninklijke Luchtvaart Maatschappij v Commission](#) and Case [C 386/22 P Martinair Holland v Commission](#) (Competition)

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: 09:30 Case [C-233/23 Alphabet and Others](#) (Competition)

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

General Court

Tuesday 16th April: 09:30 – Case [T-70/23, T-111/23 and T-84/23 Data Protection Commission v European Data Protection Board](#) (Law governing the institutions)

Tuesday 16th April: 09:30 – Case [T-503/23 Sharif v Council](#) (Restrictive measure – Syria)

Wednesday 17th April: 09:30 – Case [T-827/22 Wizz Air Hungary v Commission \(TAROM II; Covid-19\)](#) (Competition – State aid)

Thursday 18th April: 09:30 – Case [T-743/21 Ryanair v Commission \(TAP II, rescue aid\)](#) (Competition – State aid)

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)

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