Newsletter

Week XVIII - XIX: 29th April – 10th May 2024

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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, 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.

All times are 9:30 unless otherwise stated.

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

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.

Friday 3rd May

Conference 20 years since the accession of 10 States to the European Union: A new constitutional moment for Europe

On 1 May 2004, ten new Member States joined the European Union: the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia and Slovenia. This was the largest single enlargement in terms of both peoples and

countries.

Moreover, this accession brought to the common EU legal space a great variety of national histories, legal cultures and traditions. In view of the degree of integration that the EU had achieved by 2004, on the one hand, and the diversity that the ten new Member States represented, on the other hand, the importance of the moment cannot be overstated. It is fair to say that in itself the 2004 enlargement was a constitutional moment – a paradigm shift – that united Eastern and Western Europe into a common constitutional project.

The Court celebrates the 20th anniversary of the 2004 enlargement, by looking at the contribution that it has had in moving the EU integration project forward. Has it influenced a greater consolidation of EU law, as well as a more detailed regulation of some areas falling within the competence of the EU? Or, on the contrary, has it brought about new obstacles to the application of EU law? 20 years down the road, what are the lessons learned on the widening and deepening of the European integration project? Has the largest single enlargement with its successes and challenges brought about a stronger Union of European citizens?

To mark this important anniversary the Court will host a conference on Friday, May 3, 2024, from 09:00 to 18:00, entitled "20 years since the accession of 10 States to the European Union: A new constitutional moment for Europe".

This conference will explore three different topics:

1) **First session.** ***The story of the largest single enlargement of the EU***
2) **Second Session.** ***On common European values***
3) **Third Session.** ***EU economic regulation***

For more information, please see here.

The Conference will be live-streamed on the Court website.
A press release preceding the event will be sent on 30th April.

Week XIX 6th to 10th May

Tuesday 7th May

Judgment in Case C-115/22 NADA and Others

(Principles, objectives and tasks of the Treaties – Data protection)

A professional athlete has been found guilty of violating Austrian anti-doping rules between 1998 and 2015. The Austrian Anti-Doping Commission (ÖADR) declared all

results obtained by the athlete during the period in question invalid, and hence revoked any participation rights and/or bonuses and banned her from taking part in any type of sporting competition for four years.

This decision was confirmed by the ÖADR and the Austrian Independent Arbitration Commission (USK). The Austrian Independent Anti-Doping Agency (NADA) also published the name of the athlete, her anti-doping rule violations and the period of suspension in a table of suspended athletes on its publicly accessible website.

The athlete applied to USK for a review of this decision. In particular, this body is questioning the publication of the personal data of a doping professional on NADA's website and its compatibility with the GDPR (Regulation (EU) 2016/679)
To decide on the applicant's request that her personal data not be disclosed on NADA's website, the USK decided to stay the proceedings and refer questions to the Court of Justice for a preliminary ruling, including the following ones:

1) Does the GDPR preclude a national law allowing the disclosure of the details of a person subject to a decision of the USK, including that person's name, the duration of their ban and the reason behind such a ban, when it is not possible to infer any health data of the person concerned from the data disclosed?

2) Does the GDPR, prior to the disclosure, require a balancing of interests between the personal interests of the person affected by the disclosure, on the one hand, and the interest of the general public to be informed of the anti-doping violation committed by an athlete, on the other?

3) Does the disclosure of the information that a certain person has committed a specific doping violation, as a result of which that person has been banned from taking part in both national and international competitions, constitute the processing of personal data relating to criminal convictions and offences?

Background Documents C-115/22

There will be a press release for this case.

Tuesday 7th May

Opinion in Case C-4/23 Mirin

(Citizenship of the Union – Right of entry and residence)

A Romanian citizen was registered as female at birth in Romania.

After moving to the United Kingdom (UK), she acquired British nationality. In 2016, before Brexit, she began the process of changing her name and gender in the UK.

In 2020, the citizen obtained full legal recognition of his male gender. However, Romania asked him to start the process all over again following a national regulation that required him to follow a new legal procedure.

In his view, the regulation violated his right to move and reside freely within the territory of the European Union (Article 21 of the Treaty on the Functioning of the European Union and Article 45 of the Charter of Fundamental Rights of the European Union).

In this case, the Romanian referring court asked the Court of Justice whether a Member State's refusal to recognise changes in the identity of a European Union citizen obtained in the UK, when EU law was still applicable, complies with EU law. It also asks for clarification of the consequences of the United Kingdom's withdrawal from the EU in this respect.

Background Documents C-4/23

There will be a press release for this case.

Wednesday 8th May

Judgment in Case C-53/23 Asociaţia "Forumul Judecătorilor din România" (Associations de magistrats)

(Principles, objectives and tasks of the Treaties – Accession – Fundamental rights)

A professional association of Romanian magistrates has challenged the appointment of certain prosecutors responsible for prosecuting corruption cases in Romania. They believe that the national regulations that led to these appointments violate European Union law and should be annulled.

The Pitești Court of Appeal in Romania, before which this case was brought, asked the Court of Justice whether the Romanian procedural rules limiting the remedies available to magistrates' associations complied with EU law – Article 2 and Article 19 Treaty on European Union, read in the light of Article 12 and Article 47 of the Charter of Fundamental Rights of the European Union.

Those rules make the admissibility of such an action subject to the existence of a legitimate private interest. The Romanian court also raises questions about the compatibility of these rules with EU law and with Romania's commitments in the fight against corruption.

Background Documents C-53/23

There will be a press release for this case.

Wednesday 8th May

General Court

Judgment in Case T-28/22 Ryanair v Commission (Condor; restructuring aid)

(Competition – State aid)

By decision State aid SA.63203 (2021/N) – Germany - Restructuring aid for Condor of 26 July 2021, the Commission authorised, without opening a formal investigation, restructuring aid amounting to € 321 million, which Germany intended to grant to the German charter airline Condor.

The aid was intended to support the restructuring and continuation of Condor's activities, remedying the difficulties Condor was facing because of the bankruptcy of its former parent company, Thomas Cook. In the context of that bankruptcy, Condor had already benefited from rescue aid, which the Commission had approved by decision of 14 October 2019 (see the press release by the Commission). Ryanair's appeal against that decision was dismissed by the General Court by judgment T-577/20 Ryanair v Commission (Condor; rescue aid) of 18 May 2022 – see also press release No 87/22.

Ryanair had not appealed against this judgment to the Court of Justice, but challenged decision of 26 July 2021 before the General Court of the European Union, stating, *inter alia*:

- the contested State aid falls outside the material scope of the Rescue and Restructuring Guidelines,
- the contested decision does not establish the appropriateness, nor the proportionality of the State aid to the damage caused by the COVID-19 crisis, and
- the contested decision violates the general principles of non-discrimination and free provision of services that have underpinned the liberalisation of air transport in the EU since the late 1980s conveyed in the sector through Regulation (EC) No 1008/2008.

Background Documents T-28/22

There will be a press release for this case.

Wednesday 8th May

General Court

Judgment in Case T-375/22 Izuzquiza and Others v Parliament

(Provisions governing the institutions – Access to documents)

Luisa Izuzquiza, Arne Semsrott, Stefan Wehrmeyer, all from Berlin, requested access to documents relating to a Member of the European Parliament, in accordance with Article 15 of the Treaty of the Functioning of the European Union and Regulation (EC) No 1049/2001.

The above-mentioned treaty article gives EU citizens, residents and businesses the right of access to documents of the EU institutions, bodies, offices and agencies subject to certain principles and conditions. The regulation lays down the general principles and limits on access. Access can be requested to all documents drawn up or received by an institution, in all areas of EU activities.

The European Parliament refused to give access to its final decision, dated 8 April 2022, justifying the full and/or partial non-disclosure of the requested documents by invoking the exceptions listed under Article 4 of the above mentioned regulation:

a) Article 4(1)(b) states: "The institutions shall refuse access to a document where disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data".

b) Article 4(6) states: "If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released".

The defendants challenged that decision at the General Court.

Background Documents T-375/22

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

Court Recess – Europe Day

The Court is in recess on the 9th and 10th of May.

HEARINGS OF NOTE*

Court of Justice

Tuesday 7th May: 09:30 – Case C-253/23 ASG 2 (Competition) (**streamed on Curia**)

Wednesday 8th May 2024: 09:30 – Case C-121/23 P Swissgrid v Commission (Energy)

Wednesday 8th May 2024: 09:30 – Case C-346/23 Banco de Santander (Representing individual consumers) (Freedom of establishment – Free movement of capital – Internal market – Principles)

General Court

Monday 29th April: 09:30 – Case T-1077/23 Bytedance v Commission (Digital Market Act – Designation of gatekeepers)

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

Wednesday 8th May 2024: 09:30 – Case T-426/23 Chiquita Brands v EUIPO - Compagnie financière de participation (Representation of a blue and yellow oval) (Intellectual, industrial and commercial property – Trade marks)

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