



## Newsletter

Weeks XXII - XXIII: 29<sup>th</sup> May to 9<sup>th</sup> June 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 XXII – 29<sup>th</sup> May to 2<sup>nd</sup> June

**The Court is in recess for the Whit Sunday break for this week.**

## Week XXIII – 5<sup>th</sup> to 9<sup>th</sup> June

### Monday 5<sup>th</sup> June

#### [Judgment in Case C-204/21 Commission v Poland](#)

(Principles of Community law)

Following the adoption by Poland, on 20 December 2019, of a law amending the national rules relating to the organization of ordinary courts, administrative courts and the Supreme Court (hereinafter the "amending law"), the European Commission has brought an action for failure to fulfill obligations, asking the Court of Justice to declare that the regime set up by this law infringes various provisions of EU law.

The Commission considers that, insofar as the amending law confers on the Disciplinary Chamber of the Polish Supreme Court, whose independence and impartiality are not guaranteed, the competence to rule on cases having a direct bearing on the status and the exercise of the functions of judge, this law affects their independence.

In addition, according to the Commission, the amending law prohibits any national court from verifying compliance with the Union requirements relating to an independent and impartial tribunal previously established by law and makes such verification a disciplinary offence.

The Extraordinary Control and Public Affairs Chamber of the Polish Supreme Court is declared exclusively competent to carry out such verifications. Finally, the Commission maintains that, by imposing on judges the obligation to communicate information relating to their activities within associations or foundations as well as to a former political affiliation, and by providing for the publication of this information, the law amendment violates the right to respect for private life and the right to the protection

of personal data.

During the proceedings, Poland was ordered to pay the Commission, by order of the Vice-President of the Court of 27 October 2021, a penalty payment of one million euros per day. The issuance of this penalty payment was considered necessary to ensure that Poland gives effect to the interim measures adopted in an order of 14 July 2021, aimed in particular at suspending the application of provisions of the amending law contested by the Commission.

By order of the Vice-President of the Court of April 21, 2023, the amount of the penalty payment was reduced to € 500,000 per day.

### [Background Documents C-204/21](#)

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

## Tuesday 6<sup>th</sup> June

### [Judgment in Case C-700/21 O.G. \(European Arrest Warrant issued for a third country national\)](#)

(Area of Freedom, Security and Justice)

On 13 February 2012, the Braşov Court of First Instance (Romania) issued a European arrest warrant (EAW) against a Moldovan national for the purpose of executing a custodial sentence. The Court of Appeal of Bologna is the judicial authority required for the surrender of the person sought because the latter resides in Italy. Although his defense has established the lasting nature of his family and professional installation in Italy, the judicial authority requested in Italy does not have the option of refusing the surrender to Romania so that the sentence may be carried out in Italy.

Indeed, according to the Italian law transposing the Framework Decision on the EAW, this option is limited to Italian nationals and to nationals of other Member States of the Union with elements of attachment to Italy, excluding third-country nationals. Considering that this difference in treatment is unjustified, the Bologna Court of Appeal seized the Italian Constitutional Court. The latter considers that it is appropriate, before verifying the conformity of national legislation with the Italian Constitution, to examine its conformity with EU law.

The Framework Decision on EAW provides for the possibility for Member States to confer on the judge the power to refuse to execute the EAW when the requested person lives in the executing Member State, is a national of it or resides there, and that this State undertakes to carry out this penalty in accordance with its domestic law. As this provision does not limit its scope to Union citizens, the Italian Constitutional Court questioned the Court of Justice on this subject.

## [Background Documents C-700/21](#)

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

### Wednesday 7<sup>th</sup> June

#### **General Court**

#### [Judgment in Case T-141/21 Shakutin v Council](#)

(Restrictive Measures)

Following the Belarusian presidential elections in 2020, which were deemed by the Council to be incompatible with international standards and marred by oppression of independent candidates and crackdown on peaceful protesters, the Council has drawn up a new round of restrictive measures against Belarus. It has thus completed the list of persons who are prohibited from entering or passing through the territory of the Member States and whose funds and economic resources are frozen.

Mr. Aleksandr Shakutin, a Belarusian national, is among those whose name has been added to the list. The Council identified him, inter alia, as one of the main businessmen operating in Belarus, with financial interests in the sectors of construction, machinery manufacturing and agriculture and having drawn profit from privatizations during Mr Lukashenko's presidency. He is also said to be a member or former member of the presidium of the pro-Lukashenko public association "Belaya Rus" as well as of the Entrepreneurship Development Council of the Republic of Belarus (CDE). According to the Council, he takes advantage of the Lukashenko regime and supports it.

Mr. Shakutin asked the General Court to annul the restrictive measures imposed on him.

## [Background Documents T-141/21](#)

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

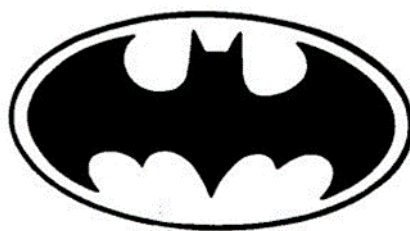
### Wednesday 7<sup>th</sup> June

#### **General Court**

#### [Judgment in Case T-735/21 Aprile and Commerciale Italiana v EUIPO DC Comics](#)

(Intellectual property)

On February 2, 1998, DC Comics, the publisher of Batman, obtained EU trade mark registration for the following figurative sign:



In 2019, Commerciale Italiana Srl filed a request for invalidity of this trademark with the European Union Intellectual Property Office (EUIPO). The request, concerning certain classes of goods, such as clothing and carnival articles, was rejected by EUIPO, first by its Cancellation Division and then by its Board of Appeal.

EUIPO considers that the Batman character has always been associated with its publisher, which consumers recognize as the logo's origin and consider it a DC Comics trademark.

Commerciale Italiana and its sole shareholder, Mr Luigi Aprile, are asking the General Court to have EUIPO's decision annulled. They dispute in particular the distinctive character of the mark and maintain that it is descriptive, circumstances preventing the registration of the mark.

### [Background Documents T-735/21](#)

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

**Thursday 8<sup>th</sup> June**

### [Judgment in Case C-50/21 Prestige and Limousine](#)

(Freedom of establishment)

Both taxis and 'private hire vehicles' ('PHVs') carry out local private transport services. In Spain, PHVs traditionally catered for the inter-urban transport market, but they have found their way into intra-urban transport in recent years. As a result, the traditional taxi model, shielded from competition thanks to State regulation, has come under challenge. As more and more suppliers of PHV services appeared, the Spanish regulator stepped in at national and local level.

In the Metropolitan Area of Barcelona ('the AMB') (Spain), specific licences are required to be able to provide urban PHV services and such licences are limited to 1 licence for every 30 taxi licences. In practice, as the number of taxi licences has remained stable for the past 35 years, this means that newcomers to the PHV market are prevented from accessing them. Regarding the additional licence required, at the material time, licences to operate as a PHV allowed for the provision of 'urban and inter-urban

services throughout the national territory’.

Prestige and Limousine S.L. (P&L) is a holder of licences to operate a PHV service within the AMB. It challenges before the High Court of Justice, Catalonia (Spain) and seeks to have annulled the local regulation concerning PHV services in the whole AMB. There are several such cases pending before the national court. Fourteen of the companies that were already providing PHV services in the area, including P&L and companies linked to international platforms, consider that the purpose of the limitations and restrictions imposed on them by the local regulation is to hinder their activity and to protect the interests of the taxi sector.

The national court has doubts about the compatibility with EU Law of both the limit imposed on the number of PHV licences and the ‘dual licence’ regime PHVs have been subject to in the AMB, which could be seen as a strategy aimed at minimising competition from PHV services vis-à-vis taxis.

The Court of Justice is thus invited to assess whether that local regulation meets the requirements of the freedom of establishment under Article 49 TFEU, which applies to services in the field of transport.

### [Background Documents C-50/21](#)

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

## Thursday 8<sup>th</sup> June

### [Judgment in Cases C-407/21 UFC – Que choisir et CLCV and C-540/21 Commission v Slovakia \(Right of cancellation without costs\)](#)

(Consumer protection)

#### **C-407/21**

UFC-Que Choisir and CLCV, two associations for the defense of consumer interests, have applied to the French Council of State for the annulment of an order relating to the financial conditions for the resolution of certain tourist travel and holiday contracts in exceptional and unavoidable circumstances or force majeure.

This regulation was adopted in the context of the COVID-19 pandemic, in order to allow travel organizers to issue a voucher instead of proceeding to the full reimbursement of payments made by travellers, by way of derogation from the requirements of the directive relating to package travel.

According to the French government, this measure was intended to preserve the viability of the tourism sector by preventing the solvency of travel organizers from

being affected to the point of jeopardizing their existence, due to the large number of reimbursement requests linked to the coronavirus pandemic.

### **C-540/21**

In Commission v Slovakia the Court is asked to look into a legislative amendment depriving travelers of their right to terminate a package travel contract and to receive a refund.

[Background Documents C-407/21](#)

[Background Documents C-540/21](#)

**There will be one press release for both these case.**

## Thursday 8<sup>th</sup> June

### [Judgment in Case C-49/22 Austrian Airlines \(repatriation flight\)](#)

(Transport)

As part of a package trip, a couple had confirmed reservations for a flight, on March 7, 2020, departing from Vienna to Mauritius, as well as for the return flight OS 18, on March 20, 2020 Both flights were to be operated by Austrian Airlines.

The outbound flight was completed. On the other hand, on March 18, 2020, Austrian Airlines canceled the return flight following the measures taken by the Austrian government due to the Covid-19 pandemic.

Austrian Airlines did have the couple's contact details but did not inform them of this cancellation, nor of the rights they had under the Air Passenger Rights Regulation. It was not until March 19, 2020 that they were informed, by the organizer of their trip, of the cancellation of the return flight as well as the organization of a repatriation flight by the Austrian Ministry of Foreign Affairs, scheduled for March 20, 2020, when no more scheduled flights were made.

The couple registered for this repatriation flight on the website of the Ministry of Foreign Affairs. As such, each of them had to pay a compulsory contribution to the costs of an amount of € 500. This repatriation flight was operated by Austrian Airlines under flight number OS 1024, at the time originally booked for the return flight OS 18 originally scheduled.

By a legal action, the couple requested that Austrian Airlines be ordered to pay the sum of € 1,000, plus interest. This sum corresponds to the compulsory participation that they had to pay for the repatriation flight. The Regional Court of Korneuburg, Austria, asks the Court of Justice to interpret the Air Passenger Rights Regulation in this regard.

## [Background Documents C-49/22](#)

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

### Thursday 8<sup>th</sup> June

#### [Opinion in Case C-218/22 Comune di Cupertino](#)

(Social Policy)

A civil servant held the position of 'Technical Manager for Public Works' from February 1992 to October 2016, in the Municipality of Cupertino, Italy. By letter of 24 March 2016 to the Municipality, this civil servant voluntarily resigned in order to take early retirement from 1 October 2016. He sought recognition of the right to an allowance in lieu of paid annual leave, amounting to 79 days, which he had not taken during the course of employment.

The Municipality replied that he was aware of his obligation to take the remaining days of leave, and that he could not monetise them. For that, the Municipality relied on the rule laid down in Italian law which provides that employees in the public sector must take annual leave in accordance with the rules of the administration in which they are employed and that they do not under any circumstances have the right to payment in lieu of unused annual leave. That provision applies equally if the employment relationship is terminated.

The interpretation given to the Italian provision by the Italian courts allows the monetisation in lieu of annual leave only if the leave was not actually taken for reasons beyond the worker's control (such as illness).

The Court of Lecce, hearing the case, has doubts as to whether Italian law is compatible with the Working Time Directive, so it asks the Court of Justice whether that Directive prohibits such national law, and if not, whether it is up to the worker or the employer to prove that the worker had a real possibility to take paid annual leave.

## [Background Documents C-218/22](#)

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

### Thursday 8<sup>th</sup> June

#### [Opinion in Case C-457/21 Commission v Amazon and others](#)

(State aid)

In a decision of 4 October 2017, the Commission found that Luxembourg had granted illegal state aid to Amazon through a 2003 tax ruling.

In the tax ruling, the Luxembourg tax administration had commented on the appropriate amount of a license fee between two Luxembourg subsidiaries of the Amazon group. The amount has an impact on the corporation tax liability of Luxembourg-based Amazon EU S.à.r.l. The higher the license fee is set, the less corporate income tax is due in Luxembourg.

Luxembourg and Amazon.com mutually agreed on a certain method to determine the appropriate license fee. The Commission regarded this transfer pricing agreement as aid because it did not comply with the arm's length principles of the OECD. The Commission carried out its own calculation of the appropriate level of royalty using a different method and arrived at a lower royalty. As this would have resulted in a higher corporate tax burden, the tax ruling conferred a selective advantage on the subsidiary that paid the royalty.

Luxembourg and Amazon brought actions for annulment against this decision before the General Court of the EU. In its judgment of May 12, 2021, the General Court declared the Commission decision to be void. On the basis of the OECD guidelines, the court could not find any incorrect determination of transfer pricing. The Commission failed to demonstrate that the tax burden was artificially reduced as a result of an overstatement of the license fee. The question of whether the arm's length principles of the OECD can be the correct reference system for state aid control was not disputed before the court.

The Commission challenged this judgment of the General Court by means of an appeal before the Court of Justice.

### [Background Documents C-457/21 P](#)

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

## Thursday 8<sup>th</sup> June

### [Opinion in Case C-376/22 Google Ireland and others](#)

(Freedom of movement for persons)

Google, Meta Platforms and Tik Tok are contesting before the Austrian courts the finding of the Austrian communications regulatory authority (KommAustria), according to which the Austrian federal law of 2020 on measures for the protection of users of communications platforms (KoPI- G) would apply to them, even if they are established in another Member State, namely Ireland.

This law aims to strengthen the responsibility of communication platforms. More



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specifically, it generally obliges providers of “communication platforms”, established in Austria or abroad, to set up a system of notification and verification of allegedly illegal content. In addition, according to this law, these providers are also required to publish regular reports on the treatment of these reports. The obligations arising from the KoPI-G do not require that an individual and concrete act be adopted beforehand. In addition, this law provides for fines in the event of violation of the obligations arising therefrom.

Google, Meta Platforms and Tik Tok argue that the KoPI-G is incompatible with the e-commerce directive, in particular with the country of origin principle.

The Austrian Administrative Court submitted questions to the Court of Justice in this respect. It seeks to ascertain whether a Member State may restrict the free movement of information society services from other Member States by adopting national measures of a general and abstract nature targeting a category of given information society services described in general terms as "communication platforms", without these measures being taken on a case-by-case basis indicating named platforms.

### [Background Documents C-376/22](#)

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

## HEARINGS OF NOTE\*

Tuesday 6<sup>th</sup> June: 09:30 - [T-360/22 Berezkin v Council](#) (Restrictive Measures - Ukraine)

Tuesday 6<sup>th</sup> June: 14:30 - [T-237/22 Usmanov v Council](#) (Restrictive Measures - Ukraine)

Wednesday 7<sup>th</sup> June: 09:30 - [T-456/21 Bank of America and Bank of America Corporation v Commission](#) (Competition)

Friday 9<sup>th</sup> June: 09:30 [T-441/21 UBS Group and UBS v Commission](#) (Competition)

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