



Newsletter

Weeks XXXVI – XXXVII 4th to 15th September 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.

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Week XXXVI– 4th to 8th September

Tuesday 5th September

[Judgment in Case C-137/21 Parliament v Commission \(Visa exemptions for nationals of the United States\)](#)

(Area of Freedom, Security and Justice)

The question whether nationals of a given third country need a visa when crossing the external borders of a Member State is governed in a uniform manner at EU level. The EU legislature, namely the European Parliament and the Council, adopted a regulation listing the third countries whose nationals require a visa and a list of those whose nationals are exempt from it.

In the event that a third country whose nationals are exempt from the visa requirement decides to subject the nationals of one or more Member States to such an obligation, the regulation provides for a 'reciprocity mechanism', structured in several stages, which makes it possible to act in solidarity at the EU level. Some of these actions are delegated to the Commission, such as the temporary suspension of exemption from the visa requirement.

United States nationals benefit from such an exemption. However, given that that third country made Bulgarian, Croatian, Cypriot and Romanian nationals subject to a visa requirement, the Parliament called on the Commission, in October 2020, after submitting a similar request in 2017, to temporarily suspend that exemption.

The Parliament took the view that under the regulation, the Commission was obliged to do so. The Commission considered it inappropriate to suspend, at that stage, the exemption at issue, in particular because of the harmful political and economic consequences that such a suspension might entail for the Union. That led the Parliament to bring an action for failure to act against the Commission before the Court of Justice of the European Union.

[Background Documents C-137/21](#)

There will be a press release in this case.

Tuesday 5th September

[Judgment in Case C-689/21 Udlændinge- og Integrationsministeriet \(Perte de la nationalité danoise\)](#)

(Citizenship of the Union)

The daughter of a Danish mother and an American father has held, since her birth in the United States, Danish and American nationality. After reaching the age of 22, she applied in Denmark to retain her Danish nationality. The competent authority informed her that she had lost Danish nationality at the age of 22.

According to Danish law, a person born abroad who has never lived in Denmark and who has also not resided there in circumstances indicating a sufficiently close attachment to that country is to lose his or her Danish nationality upon reaching the age of 22, unless he or she would thereby become stateless. The person concerned may apply to retain his or her nationality, but only between his or her 21st birthday and 22nd birthday. Failing that, he or she may apply only for naturalisation, albeit under less stringent conditions for former Danish nationals.

The applicant in the main proceedings has brought an action for annulment of the Danish authorities' decision. Those proceedings are pending before the High Court of Eastern Denmark, Denmark, which asks the Court of Justice about the compatibility of the Danish legislation with EU law.

[Background Documents C-689/21](#)

There will be a press release in this case.

Wednesday 6th September

General Court

[Judgments in Cases T-270/22 Pumpyanskiy v Council and T-272/22 Pumpyanskaya v Council](#)

(Restrictive Measures)

Since the beginning of Russia's war against Ukraine in February 2022, the Council has included on the lists of restrictive measures members of the government, banks and influential businessmen who support, benefit from or provide a substantial source of income to the Government of the Russian Federation.

Mr Dmitry Pumpyanskiy, Chairman of the Board of Directors of PJSC Pipe Metallurgic

Company (TMK) and of the Board of Directors of the Sinara Group, was added to the list on the grounds, first, that he supported the authorities of the Russian Federation and State undertakings and, second, that he is an influential businessman engaged in activities in economic sectors which constitute a substantial source of income for the Government of the Russian Federation.

Mrs Galina Evgenyevna Pumpyanskaya is also on the list of restrictive measures in her capacity as Mr Pumpyanskiy's wife and Chairwoman of the Management Board of the BF Sinara Foundation.

They have brought actions against these decisions before the General Court of the European Union.

[Background Documents T-270/22](#)

[Background Documents T-272/22](#)

There will be one press release covering both cases.

Wednesday 6th September

General Court

[Judgment in Case T-600/21 WS and others v Frontex](#)

(Law governing the institutions)

In 2016, several Syrian refugees arrived on the Greek island of Milos. After being transferred to the island of Leros, they expressed their wish to apply for international protection.

However, following a joint return operation led by the European Border and Coast Guard Agency (Frontex) and Greece, they were transferred to Turkey. From there they travelled to Iraq, where they have been living ever since.

When their complaints to Frontex's Fundamental Rights Officer about their refoulement to Turkey were unsuccessful, the refugees applied to the General Court of the European Union for compensation. They are claiming more than €96,000 for material damage and €40,000 for non-material damage, due to Frontex's alleged unlawful conduct before, during and after the return operation.

In their view, if Frontex had not breached its obligations to protect fundamental rights in the context of the return operation, they would not have been unlawfully returned to Turkey and would have obtained the international protection to which they were entitled, given their nationality and the situation in Syria at the material time Frontex allegedly violated the principle of non-refoulement, the right to asylum, the ban on collective expulsions, the rights of the child, the ban on degrading treatment, the right

to sound administration and the right to an effective remedy.

[Background Documents T-600/21](#)

There will be a press release in this case.

Thursday 7th September

[Judgment in Case C-216/21 Asociația "Forumul Judecătorilor din România"](#)

(Principles of Community Law)

In 2019, the Romanian Superior Council of Magistracy (CSM) approved a reform of the procedure for promoting judges to higher courts. The association "Forum of Judges of Romania" and an individual are challenging this reform before the Court of Appeal of Ploiești (Romania).

The applicants in the main proceedings submit that replacing the old written tests with an assessment of the candidates' work and conduct by the president and members of the higher court concerned would make the promotion system subjective and discretionary.

The Ploiești Court of Appeal asked the Court of Justice whether such a reform was compatible with the principle of the independence of judges.

[Background Documents C-216/21](#)

There will be a press release in this case.

Thursday 7th September

[Judgment in Case C-162/22 Lietuvos Respublikos generalinė prokuratūra](#)

(Approximation of Laws)

A prosecutor from a Lithuanian public prosecutor's office has been dismissed from his post by the Lithuanian Prosecutor General's Office. This disciplinary sanction was imposed on him because he had unlawfully provided information to a suspect and his lawyer during an investigation. He is challenging this decision before the Lithuanian courts.

The prosecutor's alleged misconduct was established on the basis of data stored by electronic communications service providers. In his view, the use of data enabling the source and destination of a telephone call from a suspect's fixed or mobile telephone

to be identified in cases relating to misconduct constitutes unjustified interference with the fundamental rights enshrined in EU law.

According to the Court's case law on the conditions for access to electronic communications data set out in the Directive on privacy and electronic communications, combating serious offences may justify interference with the fundamental rights enshrined in Articles 7 and 8 of the Charter of the European Union.

In this case, the Supreme Administrative Court of Lithuania, hearing the appeal, wishes to know, in substance, whether the use, for the purposes of an investigation into service misconduct related to corruption, of personal data relating to electronic communications which have been stored by electronic communications service providers and which have subsequently been made available to the competent authorities for the purposes of combating serious crime, is compatible with that directive.

[Background Documents C-162/22](#)

There will be a press release in this case.

Thursday 7th September

[Judgment in Case C-226/22 Nexive Commerce and Others](#)

(Freedom to provide services)

Nexive Commerce Srl and other economic operators providing express courier services brought applications before the Regional Administrative Court for Lazio (Italy) for the annulment of certain the Italian Communications Supervisory Authority, which identified them as being liable for the contribution to the costs relating to the operation of AGCOM as the national regulatory authority responsible for the postal sector.

They also set out the methods for calculating the contribution and the amount for the years 2017, 2018 and 2019. Under the applicable Italian law, the universal postal service providers and persons holding a licence or general authorisation are liable for this contribution. Indeed, the Directive on the development of postal services allows Member States to make the granting of authorisations to operators in the postal sector subject to the obligation to contribute financially to the operating costs of the national regulatory authorities in the sector.

These appeals having been dismissed at first instance, Nexive Commerce e.a. appealed to the Italian Council of State. This court referred questions to the Court of Justice on the scope of the contribution to the financing of the "operating costs" of the

NRAs in the postal sector.

[Background Documents C-226/22](#)

There will be a press release in this case.

Week XXXVII – 11th to 15th September

Thursday 14th September

[Judgment in Case C-27/22 Volkswagen Group Italia and Volkswagen Aktiengesellschaft](#)

(Consumer protection)

The principle of *non bis in idem* prohibits the joinder of criminal proceedings or penalties for the same acts against the same person. This principle is enshrined in Article 50 of the Charter of Fundamental Rights of the European Union ("Charter"). This case is concerned with the cross-border application of that principle and the difficulties it raises.

The Volkswagen group marketed worldwide 10.7 million diesel vehicles fitted with devices which altered the measurement of pollutant emissions for the purposes of their type-approval under European regulations. Seven hundred thousand of these vehicles were sold in Italy.

On August 4, 2016, the Italian Competition Authority fined Volkswagen and its Italian subsidiary €5 million on the grounds that the sale of these vehicles and the misleading advertising of them - by highlighting their compliance with environmental regulations - constituted unfair commercial practices. Volkswagen challenged before the Italian courts the fine, which was the highest fine for such an infringement. Under Italian law, such infringements and their sanction are administrative in nature.

Before the Italian courts could rule, the Brunswick Public Prosecutor's Office, which had instituted criminal proceedings in Germany against Volkswagen, notified Volkswagen that it had been ordered to pay a penalty of €1 billion for the worldwide marketing of the aforementioned vehicles and its advertising of them. The penalty responded to the negligent behavior in installing the tricked devices. Volkswagen did not contest the penalty and paid the fine on June 18, 2018.

On April 3, 2019, the Italian courts dismissed Volkswagen's appeal, despite the fact

that it would have been ordered to pay the penalty in Germany, as they found that the penalty imposed by the Italian competition authority had a different legal basis, so that the *non bis in idem* principle did not represent any obstacle for the company to be sanctioned in Italy.

Volkswagen appealed the judgment to the Italian Council of State, which has referred several questions to the Court of Justice for a preliminary ruling on the application of the *non bis in idem* principle to this case.

[Background Documents C-27/22](#)

There will be a press release in this case.

Thursday 14th September

[Judgment in Case C-83/22 Tuk Tuk Travel](#)

(Freedom to provide services)

In October 2019, a traveller purchased from the tour operator Tuk Tuk Travel a package holiday for two people to Vietnam and Cambodia: departure from Madrid (Spain) was on 8 March 2020, with the return scheduled for the following 24 March. The traveller paid almost half the total price of the holiday. The contract provided information about the possibility of cancelling before the departure date, subject to a fee. On the other hand, it was silent as to the possibility of cancellation without charge on account of exceptional and unavoidable circumstances at the destination, as provided for in the Package Travel Directive.

On 12 February 2020, in view of the spread of the coronavirus in Asia, the traveller informed Tuk Tuk Travel of his decision to cancel the contract and requested reimbursement of all the sums to which he was entitled. The tour operator having informed him that, after deduction of cancellation costs, only a small part of the amount paid would be reimbursed, the traveller brought an action before the courts.

He alleges that he terminated the contract almost a month before the planned departure date, citing force majeure: the spread of the coronavirus in Asia. The traveller, who was not represented by a lawyer, sought only partial reimbursement of the amount paid, as he considered that a quarter of this amount corresponded to management costs incurred by Tuk Tuk Travel.

The Spanish judge hearing the case asked the Court of Justice to interpret the Package Travel Directive. In particular, he questions whether it was possible, under the Directive, to automatically grant the traveller reimbursement of all payments made,

where the traveller had terminated the contract due to exceptional circumstances. The Spanish judge observed that this possibility would be contrary to fundamental principles of Spanish procedural law.

[Background Documents C-83/22](#)

There will be a press release in this case.

Thursday 14th September

[Judgment in Case C-113/22 TGSS \(Refus du complément de maternité\)](#)

(Social policy)

In its judgment of 12 December 2019, the Court of Justice of the European Union held that the pension supplement granted by Spain to mothers in receipt of an invalidity pension when they have two or more children (biological or adopted) must also be granted to fathers in a comparable situation. The national legislation reserving the grant of that supplement to women alone constituted direct discrimination on grounds of sex, contrary to the directive on equal treatment.

On the basis of this judgment, in November 2020 the father of two children asked the Spanish social security system to recognise his right to the supplement to the absolute permanent invalidity benefit that he had been receiving since November 2018. When his application was rejected, he took his case to court. An initial judgment recognised his right to the additional pension in question, while rejecting the claim for compensation that the father had submitted at the same time. Both the father and the Spanish authorities appealed against this judgment to the Superior Court of Justice of Galicia (Spain).

That court wondered whether the systematic refusal to grant men - pending the adaptation of the discriminatory Spanish legislation to the Court's judgment of 12 December 2019 - the additional pension at issue, which obliges them to claim it in court, should be regarded as discrimination distinct from the discrimination highlighted in that judgment. It also queried whether, in the event of an infringement of Union law being found, the father could be awarded additional compensation and what that compensation would consist of.

[Background Documents C-113/22](#)

There will be a press release in this case.

Thursday 14th September

[Opinion in Case C-115/22 NADA and others](#)

(Approximation of laws)

A woman, who was a professional athlete from 1998 to 2015, was found guilty of an anti-doping rules violation. In response, the Austrian national anti-doping authority (Österreichische Anti-Dopingkommission, ÖADR) published her name, her rule violation, and the period of suspension on its publicly accessible website. It also declared all results that the athlete obtained between 10 May 2015 and the date of entry into force of its decision as invalid, revoked any entry fees and/or prize money and banned her from participating in sporting competitions of any kind for a period of four years starting from 31 May 2021.

During the procedure before the ÖADR, the athlete had requested that the contested decision would not be disclosed to the general public by means of an openly accessible online publication. That request was rejected by the ÖADR in the contested decision. Indeed, Austrian law requires decisions finding anti-doping rules violations to be made available to the public, without any individualised proportionality review when it comes to professional athletes. It is the Independent Anti-Doping Agency of Austria (Nationale Anti-Doping Agentur, NADA) that carries out the publication. The athlete submitted a request for review of the contested decision to the Independent Arbitration Committee, Austria (Unabhängige Schiedskommission, USK). The USK upheld the substantive findings of the ÖADR and confirmed the athlete's anti-doping rule violations and the sanction imposed. At the same time, it reserved its decision on the athlete's request to refrain from publishing the contested decision to the general public.

The USK has doubts as to the compatibility with the GDPR, of the practice of disclosing the athlete's personal data to the general public by means of openly accessible online publication on NADA's website. It therefore decided to stay proceedings and to ask the Court of justice for a preliminary ruling. In particular, USK asks whether the information that a certain person committed a specific doping violation, as a result of which that person has been banned from taking part in competitions constitute "data concerning health" within the meaning of the GDPR. Moreover, it asks if the GDPR precludes a national provision that provides for the disclosure of personal data of a professional athlete relating to an anti-doping rule violation.

[Background Documents C-115/22](#)

There will be a press release in this case.

HEARINGS OF NOTE*

Court of Justice

Tuesday 12th September: 09:30 – [C-808/21 Commission v Czech Republic \(eligibility and membership of a political party\)](#) (Citizenship of the Union)

Tuesday 12th September: 09:30 – [C-814/21 Commission v Poland \(eligibility and membership of a political party\)](#) (Citizenship of the Union)

General Court

Monday 11th September: 14:30 – [T-282/22 Mazepin v Council](#) (Restrictive Measures – Ukraine)

Tuesday 12th September: 09:30 – [T-289/22 Shuvalov v Council](#) (Restrictive Measures – Ukraine)

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