Newsletter

Week LI - LII: 16th to 27th December 2024

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Week LI: 16th to 20th December

Wednesday 18th December

General Court

Judgment in Case T-776/22 TP v Commission

(European Union public contracts)

In 2009, the European Commission launched a procedure for awarding public works contracts for modernising a structure. It awarded the contract to two companies, including TP, which had previously entered into a consortium contract with each other. On completion of the works, after noting certain malfunctions in the structure, the Commission sent them notice of early termination of the contract and initiated arbitration proceedings under the aegis of the International Chamber of Commerce (ICC).

The Arbitral Tribunal ruled that the two companies were jointly and severally liable to pay the European Union an amount corresponding to the costs necessary to repair the work. It also qualified the consortium's conduct as gross negligence.

In October 2022, the Commission adopted a decision under which TP was excluded, for a period of two years, from participation in award procedures governed by the 2018 Financial Regulation or financed by the European Development Fund (EDF) and from any selection for implementation of EU funds.

The Commission based its decision on the 2018 Financial Regulation, which sets out the conditions for exclusion. The authorising officer responsible may exclude a person or entity in particular where that person or entity has seriously failed to fulfil essential obligations in the performance of a legal commitment financed by the EU budget, which has led to the early termination of that commitment.

TP brought an action before the General Court of the European Union for annulment of this decision.

Background Documents T-776/22

All times are 9:30 unless otherwise stated.

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

There will be a press release for this case.

Wednesday 18th December

General Court

Judgment in Cases T-489/23 Mironovich Shor v Council and T-493/23 Tauber v Council

(External relations – Common Foreign and Security Policy)

In April 2023, in response to the destabilising actions in Moldova, the European Union adopted restrictive measures for the first time. In particular, they target those responsible for threats to Moldova's sovereignty, democracy, rule of law, stability or security.

Mr Ilan Mironovich Shor, former leader of the ŞOR political party and Moldovan-Israeli businessman, and Ms Marina Tauber, former Vice-President of the ŞOR party of Moldovan nationality, had their funds frozen in particular for their role in the organisation of violent, illegally financed anti-government demonstrations threatening the sovereignty, democracy and stability of Moldova.

In 2023, they were included, and then maintained in 2024, by the Council of the European Union on the lists of persons and entities subject to restrictive measures on account of the situation in the Republic of Moldova. Mr Shor and Ms Tauber asked the General Court to annul those measures.

Background Documents T-489/23
Background Documents T-493/23

There will be one press release for these cases.

Thursday 19th December

Judgment in Case C-295/23 Halmer Rechtsanwaltsgesellschaft

(Free movement of capital)

The German law firm Halmer Rechtsanwaltsgesellschaft challenged before the Bavarian Bar Disciplinary Board (Germany) a decision of the Munich Bar Association of November 9, 2021 to disbar it, on the grounds that an Austrian limited liability company had acquired shares in it for purely financial purposes.

Under the German regulations applicable at the time, only lawyers and members of certain liberal professions could become partners in a law firm.

The Bavarian Lawyers' Disciplinary Board has referred questions to the Court of Justice on the compatibility of these rules with EU law.

Background Documents C-295/23

There will be a press release for this case.

Thursday 19th December

Judgment in Case C-157/23 Ford Italia

On July 4, 2001, ZP purchased a Ford Mondeo car from the company Stracciari, a dealer for the Ford brand having its registered office in Italy.

The vehicle had been manufactured by Ford WAG, a company established in Germany which distributes its vehicles in Italy through Ford Italia. Ford Italia is an intra-EU importer and supplied the vehicle to the Ford dealer (Stracciari).

Ford WAG and Ford Italia belong to the same group of companies. On December 27, 2001, ZP was involved in a traffic accident in which the vehicle's airbag did not work and on January 8, 2004, ZP brought a claim for compensation for the damage suffered before the District Court, Bologna (Italy). The claim was brought against Stracciari, in its capacity as a vendor, and against Ford Italia.

Ford Italia appeared in the proceedings, stated that it had not manufactured the vehicle and designated Ford WAG as the producer. It argued that, as the supplier, it was not responsible for the defect in the vehicle and that, by identifying the producer, it was exempted from liability.

On November 5, 2012, the District Court, Bologna found Ford Italia liable in tort for the damage caused as a result of the defective product.

Ford Italia appealed the judgment among others before the Supreme Court of Cassation, Italy, which refers to the Court of Justice for guidance. The Italian court asks whether a supplier can be held liable as the producer if it has not marked the product with its own name, trademark, or distinguishing feature, but its name or trademark is the same or similar to that of the actual producer.

At issue in the original dispute is whether, in that case, in accordance with Directive 85/374/EEC, it should be the manufacturer of the vehicle in Germany (Ford WAG) or its supplier in Italy (Ford Italia) which should be held liable.

Background Documents C-157/23

There will be a press release for this case.

Thursday 19th December

Judgment in Case C-531/23 Loredas

(Free movement of capital – Freedom of movement for workers – Social policy)

This reference for a preliminary ruling was made in a dispute between HJ, a domestic worker, and her employer, a family consisting of two natural persons, US and MU, concerning a claim for unfair dismissal and a claim for compensation.

On March 31, 2021, HJ filed a claim for unfair dismissal against US and MU, as well as a claim for compensation for unpaid wages, alleging that she had worked longer hours than those specified in her employment contract. However, the Spanish court of first instance considered that this circumstance had not been proven by the claimant and she was awarded less compensation than that claimed by HJ.

As the defendant had not appeared before the court, it had not provided the court with any records of the time actually worked by HJ. The court stated that the absence of these records could not mean that HJ's allegations regarding the performance of days longer than those indicated in his employment contract were accepted absolutely.

HJ brought an action against that decision before the referring court, which entertained doubts as to the compatibility of the national rules relating to the special regime for domestic employees with Union law, in so far as the exception to the general obligation to record working time may imply, for domestic employees, treatment contrary to the provisions of Directive 2003/88/EC.

In addition, the fact that the group of domestic employees in Spain is heavily feminised could also imply indirect discrimination on grounds of sex, contrary to the Charter and Directive 2006/54/EC.

In order to determine whether HJ should be awarded higher compensation, corresponding to the working time and salary alleged by it, and having doubts as to the compatibility with Union law of the provision establishing that registration of the working time of domestic employees is not compulsory, the referring court decided to refer the question to the Court.

Background Documents C-531/23

There will be a press release for this case.

Thursday 19th December

Judgment in Joined Cases C-244/24 Kaduna and C-290/24 Abkez

(Area of Freedom, Security and Justice – Asylum policy)

In 2022, following the invasion of Ukraine by Russian armed forces, the European Union set up a temporary protection mechanism for displaced persons from Ukraine.

This European mechanism applies to three categories of displaced persons:

- Ukrainian nationals,
- stateless persons and nationals of non-EU countries other than Ukraine who have been granted international protection or equivalent national protection in Ukraine,
- family members of these first two categories of persons, and
- stateless persons and nationals of non-EU countries other than Ukraine who have a permanent residence permit in Ukraine and who are unable to return to their country or region of origin in safe and sustainable conditions.

However, Member States may extend this temporary protection to any category of persons displaced for the same reasons from Ukraine, who were legally resident in Ukraine and who are unable to return to their country or region of origin in safe and durable conditions.

The Dutch authorities initially intended to implement this option by extending the benefit of temporary protection to all holders of a Ukrainian residence permit, including temporary ones, without assessing whether they were able to return to their country or region of origin in safe and durable conditions.

However, those authorities subsequently decided to limit such protection to a more restricted category of persons, namely holders of a permanent Ukrainian residence permit.

A number of persons who did not have such a permanent Ukrainian residence permit, but who had already been granted optional temporary protection, brought actions before the Netherlands courts.

The Dutch Council of State and the Court of The Hague, sitting in Amsterdam, Netherlands, referred questions to the Court of Justice on whether and how a Member State may terminate the optional protection granted in this context.

Background Documents C-244/24

There will be a press release for this case.

Thursday 19th December

Judgment in Joined Cases C-185/24 and C-189/24 Tudmur

(Area of Freedom, Security and Justice – Asylum policy)

This case concerns the interpretation of the Dublin III Regulation, which establishes the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a non-EU-country national or a stateless person.

Two Syrian nationals, RL and QS, have applied for asylum in Germany. However, Italy was identified as the Member State responsible. The German Federal Office for Migration and Refugees therefore asked Italy to take charge of RL and QS.

This request went unanswered. The German Federal Office then rejected the asylum applications as inadmissible on the grounds that Italy was responsible for examining their asylum applications. It also ordered to remove the applicants and send them back to Italy.

The asylum seekers' appeal against the Federal Office's decision is currently before the Higher Administrative Court of the Land of North Rhine-Westphalia – the referring court. During the appeal procedures, the Italian Dublin Unit sent a circular letter to the network of all Dublin Units, asking Member States to temporarily suspend all transfers to Italy for technical reasons.

In a second letter, the Italian Dublin Unit confirmed the unavailability of reception facilities in view of the large number of arrivals, also taking into account the lack of available reception places.

In this context, the referring court asks the Court to clarify the interpretation of the Dublin III Regulation, in particular as regards the existence of systematic failings in a Member State designated as responsible.

Background Documents C-185/24

There will be a press release for these cases.

Thursday 19th December

Judgment in Case C-664/23 Caisse d'allocations familiales des Hauts-de-Seine

(Area of Freedom, Security and Justice)

This application was made in the context of a dispute between a national of a non-EU

country and the *Caisse des allocations familiales des Hauts-de-Seine* (France) concerning a refusal to grant family benefits to that national on the grounds that two of his minor children had entered France illegally.

The said national, of Armenian nationality, entered France illegally on January 7, 2008 with his wife and two minor children. Since 2014, he has held a temporary 'private and family life' residence permit issued by the Hauts-de-Seine prefecture, authorising him to work.

In April 2014, he applied to the fund for family benefits for his two minor children born outside France in 2004 and 2005, and for his daughter born in France in 2011. In August 2016, his application was refused for his two children born outside French territory. After an unsuccessful application to the fund's amicable appeals commission, this same national challenged the refusal decision before the French courts.

The referring court, before whom the matter currently lies, considers that there is doubt as to the interpretation of Directive 2011/98/EU, and has referred the matter to the Court for a preliminary ruling.

Background Documents C-664/23

There will be a press release for this case.

Week LII 2023 – 23th to 27th December

The Court is in Christmas recess until Sunday 05 January 2025.