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## **WORKING SESSION: Case study and exchange of best practice**

### **Advanced Training in EU Law for Judges and Prosecutors**

**Vilnius, 12 May 2025**

Roland Klages

## **I. Case**

**You are the judge at the relevant district court in charge of the case.**

**Can you refer questions on the following case to the EU Court of Justice? Should you do so?**

**If you decide to go for a request for a preliminary ruling, please formulate the question(s) accordingly.**

### **FACTS**

1. The National Press, Radio and Television Agency ('the agency'), Sweden is responsible, among other things, for issuing certificates conferring on their holders constitutional protection under freedom of expression, known as 'certificates of constitutional protection'.
2. Garrapatica operates the Lexbase website, which allows searches to be carried out on individuals and companies that have been the subject of criminal proceedings or civil complaints before a national court. In that context, the website publishes, in particular, personal data relating to individuals who have been the subject of criminal proceedings in the form of a database. It was granted a constitutional protection certificate by the agency covering the information published in that database.
3. ND, the applicant in the main proceedings, was convicted by a judgment of 17 January 2011.

4. Garrapatica published that judgment on Lexbase, where it remained accessible until February 2024. However, although the applicant in the main proceedings requested that company to delete his personal data, that data was not deleted immediately, but only following a routine check.
5. ND brought an action before the competent District Cour seeking an order that Garrapatica be ordered to pay damages of EUR 26,000, plus interest.
6. Garrapatica contested that claim and, in doing so, argued that the content published on Lexbase was covered by a certificate of constitutional protection. Indeed, according to national law, in such a situation, the GDPR does not apply as such, since the right to the protection of personal data is guaranteed by constitutional laws on the media, which provide, as the only legal remedy, for the possibility of holding the author of the breach of such protection criminally liable for defamation and the right to claim compensation in that regard.

## LEGAL PROVISIONS

[Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\)](#) – the GDPR

### Article 85 - Processing and freedom of expression and information

1. Member States shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression.
2. For processing carried out for journalistic purposes or the purpose of academic artistic or literary expression, Member States shall provide for exemptions or derogations from Chapter II (principles), Chapter III (rights of the data subject), Chapter IV (controller and processor), Chapter V (transfer of personal data to third countries or international organisations), Chapter VI (independent supervisory authorities), Chapter VII (cooperation and consistency) and Chapter IX (specific data processing situations) if they are necessary to reconcile the right to the protection of personal data with the freedom of expression and information.
3. Each Member State shall notify to the Commission the provisions of its law which it has adopted pursuant to paragraph 2 and, without delay, any subsequent amendment law or amendment affecting them.

## Article 17 - Right to erasure ('right to be forgotten')

1. The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:

- (a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
- (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing;
- (c) the data subject objects to the processing pursuant to Article 21(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2);
- (d) the personal data have been unlawfully processed;
- (e) the personal data have to be erased for compliance with a legal obligation in Union or Member State law to which the controller is subject;
- (f) the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).

2. Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform controllers which are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, those personal data.

3. Paragraphs 1 and 2 shall not apply to the extent that processing is necessary:

- (a) for exercising the right of freedom of expression and information;
- (b) for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- (c) for reasons of public interest in the area of public health in accordance with points (h) and (i) of Article 9(2) as well as Article 9(3);
- (d) for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing; or
- (e) for the establishment, exercise or defence of legal claims.

## Article 10 - Processing of personal data relating to criminal convictions and offences

Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6(1) shall be carried out only under the control of official authority or when the processing is authorised by Union or Member State law providing for appropriate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority.

## **II. Vade mecum – good example of a request for a preliminary ruling**

A well-drafted request for a preliminary ruling under Article 267 TFEU should clearly outline the factual and legal context, specify the relevance of EU law, and formulate precise questions for the EU Court of Justice of the EU. Below is an example structured according to recommendations from CJEU guidelines and case law:

Example Request for a Preliminary Ruling

[National Court Name]

Case Reference: [Number/Year]

Parties: [Applicant] v. [Respondent]

### **1. Factual and Legal Context**

The dispute concerns [briefly describe the core issue, e.g., "a consumer's claim for compensation under Directive 2011/83/EU after a retailer failed to deliver goods"]. The national court has established the following facts:

- [Key factual details, e.g., "The consumer ordered a product online on [date], paid in full, but received no delivery after 30 days."]
- [Relevant national law or procedural steps, e.g., "Under [National Law X], consumers must initiate mediation before litigation."]

### **2. Applicable EU Law and Legal Doubts**

The case raises questions about the interpretation of:

- Directive 2011/83/EU on consumer rights, particularly Article 18(1) (delivery deadlines).
- Whether national mediation requirements under [National Law X] are compatible with Article 6(1) of the Directive, which guarantees direct legal redress.

### **3. Questions Referred**

1. Does Article 18(1) of Directive 2011/83/EU preclude a national rule requiring mandatory mediation before a consumer can bring legal proceedings for non-delivery of goods?
2. If the answer to the first question is affirmative, must the national court disregard the mediation requirement to ensure the effectiveness of EU consumer rights under Article 6(1)?

#### **4. Relevance to the Outcome**

- The national court cannot rule on the consumer's claim without clarifying whether the mediation requirement is compatible with EU law.
- A conflicting interpretation by [National Supreme Court, if applicable] in [Case Y] creates legal uncertainty, necessitating a uniform EU-wide interpretation.

#### **5. Procedural Context**

- This court is a [court of first instance/non-final appeal] with discretion to refer under Article 267(2) TFEU[.
- The parties were invited to submit observations on the referral, but the decision to refer rests solely with this court.