

### Question referred

According to Regulation (EC) No 4/2009, <sup>(2)</sup> is there *lis alibi pendens* with the same subject matter if there are proceedings concerning child maintenance in Belgium between the child's father and the child's mother while proceedings concerning child maintenance have been brought at a later stage by the child, who has in the meantime come of age, against the child's mother in Germany?

<sup>(1)</sup> The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

<sup>(2)</sup> Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ 2009 L 7, p. 1).

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### Request for a preliminary ruling from the Conseil d'État (France) lodged on 28 June 2023 — Association Mousse v Commission nationale de l'informatique et des libertés (CNIL), SNCF Connect

(Case C-394/23, Mousse)

(2023/C 329/14)

Language of the case: French

### Referring court

Conseil d'État

### Parties to the main proceedings

*Applicant:* Association Mousse

*Defendants:* Commission nationale de l'informatique et des libertés (CNIL), SNCF Connect

### Questions referred

1. In order to assess whether data collection is adequate, relevant and limited to what is necessary, within the meaning of Article 5(1)(c) of the GDPR <sup>(1)</sup> and the need for processing in accordance with Article 6(1)(b) and (f) of that regulation, may account be taken of commonly accepted practices in civil, commercial and administrative communications, with the result that the collection of data relating to customers' civil titles, which is limited to 'Mr' or 'Ms', may be regarded as necessary, without this being precluded by the principle of data minimisation?
2. In order to assess the need for the compulsory collection and processing of data relating to customers' civil titles, even though some customers consider that they do not come under either of the two civil titles and that the collection of such data is not relevant in their case, should account be taken of the fact that those customers may, after having provided those data to the data controller in order to benefit from the service offered, exercise their right to object to the use and storage of those data by relying on their particular situation, in accordance with Article 21 of the GDPR?

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<sup>(1)</sup> 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) (OJ 2016 L 119, p. 1).

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### Request for a preliminary ruling from the Sofiyski gradski sad (Bulgaria) lodged on 29 June 2023 — Criminal proceedings against VB

(Case C-400/23, VB II)

(2023/C 329/15)

Language of the case: Bulgarian

### Referring court

Sofiyski gradski sad

## Criminal proceedings against

VB

### Questions referred

- 1.1 Must the second sentence of Article 8(4) of Directive (EU) 2016/343 <sup>(1)</sup> be interpreted as meaning that a person who is convicted *in absentia*, when the situations provided for in Article 8(2) do not apply, and is given a custodial sentence, must be informed of the decision convicting him or her when he or she is apprehended for the purpose of the execution of the sentence?
- 1.2 What is the content of the requirement that a person be 'informed of the decision' pursuant to the second sentence of Article 8(4) of Directive (EU) 2016/343, and does it mean that a copy of that decision must be served?
- 1.3. If the answers to Questions 1.1. and 1.2. are in the negative, does the second sentence of Article 8(4) of Directive (EU) 2016/343 preclude a national court from deciding to ensure that a copy of that decision is served?
- 2.1. Is national legislation which — in the event that a criminal charge is examined and a judicial decision convicting an accused person is handed down in the absence of that person, without the conditions laid down in Article 8(2) of the directive being met — lays down no procedures for informing the person convicted *in absentia* of his or her right to a new trial with his or her participation, and, in particular, such information is not provided when the person convicted *in absentia* is detained, compatible with the second sentence of Article 8(4) of Directive (EU) 2016/343?
- 2.2. Is it relevant that the national legislation — Article 423 of the Code of Criminal Procedure (NPK) — stipulates that the person convicted *in absentia* is to be informed of his or her right to a new trial, but only after that person has made a request for that conviction to be overturned and for a new trial to be held with his or her participation, in that he or she is to be provided with the information in the form of a judicial decision in response to that request?
- 2.3. If that is not the case, are the requirements laid down in the second sentence of Article 8(4) and Article 10(1) of Directive (EU) 2016/343 met if the court examining a criminal charge and handing down a decision convicting the accused person *in absentia*, when the situations provided for in Article 8(2) of the directive do not apply, sets out in its decision that person's right to a new trial or other legal remedy and requires the persons detaining the convicted person to serve him or her with a copy of that decision?
- 2.4. If that is the case, does the second sentence of Article 8(4) of Directive (EU) 2016/343 preclude a court which hands down a decision convicting an accused person *in absentia*, when the situations provided for in Article 8(2) of the directive do not apply, from deciding to set out in its decision that person's right to a new trial or to another legal remedy under Article 9 of the directive, and from requiring the persons detaining the convicted person to serve him or her with a copy of that decision?
3. What are the first and the last possible points in time at which the court must determine whether the criminal proceedings are being conducted in the absence of the accused person without the conditions laid down Article 8(2) of Directive (EU) 2016/343 being met and must take measures to ensure that information is provided in accordance with the second sentence of Article 8(4) of the directive?
4. Are the views of the prosecution and the defence counsel for the absent accused person to be taken into account in the decision referred to in Question 3 above?
- 5.1. Does the expression 'the possibility to challenge the decision' in the second sentence of Article 8(4) of Directive (EU) 2016/343 refer to a right of appeal within the appeal period or does it refer to the challenging of a judicial decision that has become final?
- 5.2. What should be the content of the information to be provided in accordance with the second sentence of Article 8(4) of Directive (EU) 2016/343 to a person who has been convicted *in absentia*, without the conditions laid down in paragraph 2 being met, about 'the possibility to challenge the decision and [about] the right to a new trial or to another legal remedy, in accordance with Article 9': should it concern the right to obtain such a legal remedy, if he or she challenges his or her conviction *in absentia*, or the right to make such a request, the merits of which are to be assessed at a later stage?

6. What is meant by the expression ‘another legal remedy, which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision being reversed’ in the first sentence of Article 9 of Directive (EU) 2016/343?
7. Is a provision of national law — Article 423(3) of the NPK — which requires the appearance in person of the person convicted *in absentia* as a prerequisite for consideration of his or her request for a new trial and for its approval compatible with Article 8(4) and Article 9 of Directive (EU) 2016/343?
8. Are the second sentence of Article 8(4) and Article 9 of Directive 2016/343 applicable to persons who are acquitted?

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(<sup>1</sup>) Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1).

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**Request for a preliminary ruling from the Landgericht Köln (Germany) lodged on 3 July 2023 —  
Touristic Aviation Services Limited v flightright GmbH**

**(Case C-405/23, Touristic Aviation Services)**

(2023/C 329/16)

*Language of the case: German*

**Referring court**

Landgericht Köln

**Parties to the main proceedings**

*Defendant and appellant:* Touristic Aviation Services Limited

*Applicant and respondent:* flightright GmbH

**Question referred**

Is Article 5(3) of Regulation (EC) No 261/2004 (<sup>1</sup>) to be interpreted as meaning that a shortage of staff at the airport operator, or at a company commissioned by the airport operator, responsible for handling the baggage loading operations to be provided by that airport operator, constitutes an extraordinary circumstance, within the meaning of that provision, that has an external and uncontrollable effect on the normal activity of the air carrier using that service of the airport operator / company commissioned by that airport operator, or is the loading of baggage by the airport operator / a company commissioned by that airport operator and a shortage of loading staff at that airport operator / company commissioned by that airport operator to be classified as part of the normal exercise of the activity of that air carrier, such that an exculpation as provided for under Article 5(3) of Regulation (EC) No 261/2004 can be considered only if the reason for the shortage of staff constitutes an extraordinary circumstance within the meaning of that provision?

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(<sup>1</sup>) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

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**Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 13 July  
2023 — LEGO Juris A/S v Pozitív Energiaforrás Kft**

**(Case C-437/23, LEGO Juris)**

(2023/C 329/17)

*Language of the case: Hungarian*

**Referring court**

Fővárosi Törvényszék