



## *European Law Moot Court Competition Case 2022-2023*

### *M-23/22, M-33/22 and M-43/22, Emauricio Dhable e.a.*

1. The Kingdom of Macondo is a founding member of the European Union and a proud homeland of good wine and high taxes. In its turbulent past, the borders of the Kingdom of Macondo were subject to frequent changes and, until 1918, it formed a single state together with a number of now distinct and independent countries. One of these, the Republic of Legen, is a small country that has not yet joined the EU but holds candidate status. After peaceably gaining its independence from the Kingdom of Macondo in 1918, the Republic of Legen experienced a difficult period during which it invested heavily in innovation and radical reforms to improve its competitiveness and to attract talent. Although that hard work paid off, the Republic of Legen ‘struck gold’ when a new type of spice, with a taste comparable to that of truffles, was discovered in its northern region, right at the border with the Empire of Barataria. All world-renowned chefs rushed to invent recipes that incorporated the new spice and even Gordon Ramsay could not find fault with it. This discovery brought billions into the state budget because, in accordance with Legenian law, spice exploration could not be entrusted to a private operator. Every cent generated from the spice trade was displayed, in real time, on the Government’s website and the citizens voted directly on its spending, thus making abuse of the system practically impossible.

2. Everything was proceeding well for the Republic of Legen until increased wealth led to further problems. The Empire of Barataria, its only non-EU neighbouring country, began to lay claim to the northern region of the Republic of Legen. The Empire of Barataria argues that this area, (coincidentally) rich in the new spice, belonged historically to the Empire of Barataria and is, to this day, populated largely by ethnic Baratarians. The Republic of Legen was shocked by these claims because the two countries have historically maintained good relations and have never had any prior disputes. The Republic of Legen contested strongly the Baratarian claims as completely unfounded and lobbied, together with the Kingdom of Macondo, through diplomatic channels for the EU to sanction the Empire of Barataria.



3. The diplomatic dispute escalated to a total economic blockade by the Empire of Barataria, Legen's most significant trading partner. As a result, the Republic of Legen lost 30% of its GDP and is now facing unprecedented levels of poverty. Spice exploration has been halted and Legen's economy has begun to crumble. Faced with an influx of refugees from the impoverished Republic of Legen, the Kingdom of Macondo advocated for the strictest possible sanctions against the Empire of Barataria on the EU level and managed to obtain, after the adoption of the Council's Common Position 2022/24 and Council Decision 2022/24, unanimous support for the implementation of Regulation 2402/2022. According to the Article 2 of that Regulation:

“1. All funds and economic resources belonging to, owned, held or controlled by any natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I, shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I.

3. No trade in goods or services with the Kingdom of Barataria shall be allowed.

4. No work permits shall be issued to Baratarian citizens by the European Union Member States and no establishment in the European Union shall be granted to legal persons established in the Empire of Barataria.

5. No transfer, direct or indirect, of any funds or economic resources from the Empire of Barataria to the territory of the European Union shall be allowed.”

4. One of the persons listed in Annex I to Regulation 2402/2022 is Emauricio Dhable. The reason provided by the Council for his inclusion in the list of sanctioned persons is his alleged proximity to the Emperor of Barataria. According to the Council, this special link is evident from several decisions of the EU Member States, numerous newspaper articles in respectable news media, photographs of Emauricio Dhable with the Emperor and his family, as well as the fact that Emauricio Dhable's core business consists in exploiting underground deposits of the valuable new type of spice, which would probably not be possible without Emperor's personal permit. The Council also considered, based on the information provided by an undisclosed source, that Emauricio Dhable is benefitting from spice extraction in the



disputed border area between the Empire of Barataria and the Republic of Legen, thus supporting implicitly the economic blockade.

5. Emauricio Dhable, a Baratarian businessman, a philanthropist, and a true friend of animals, was caught off guard by the sanctions. He has lived in the Kingdom of Macondo for the past 5 years and, although roughly 50% of his business is tied to the exploitation of valuable spices in the Empire of Barataria. He has branched out to other areas such as the hospitality business and establishing data farms in certain EU Member States. He donates regularly to charitable causes, but his biggest donation so far was 5 million euros to save the hippos marooned on Pablo Escobar's former estate from certain death. Emauricio Dhable's businesses were severely hit by Regulation 2402/2022. Being unable to import spices or to transfer revenue from his Baratarian businesses, together with the freezing of his assets located in the Kingdom of Macondo, he found himself in a difficult economic situation.

6. Emauricio Dhable's troubles did not end there. His private open-air zoo and theme park, Folivora, which he set up and in which he currently holds 33% of the shares, has come under scrutiny. The government of Macondo proposed – and the King signed into law – Royal Decree No. 76/2022. While the decree, in essence, reproduced the provisions of Regulation 2402/2022 it included additional provisions, which set out in detail the restrictive measures, provide for the possibility of their modification and define the notion of “associated persons” contained in Article 2 of that Regulation. Citing Regulation 2402/2022 and the Royal Decree No. 76/2022 as its basis, the Macondian government adopted sanction against the zoo and froze its funds, considering it to be an entity associated with a person listed in Annex I of that Regulation.

7. Pursuant to Article 7(1) and (3) of the Royal Decree No. 76/2022, which authorizes the government of Macondo to unilaterally “modify the restrictive measure if a change in circumstances so requires” and to “enact specific remedies to bring an end to a restrictive measure”, the government issued Decision 65/2022. Decision 65/2022 ordered Emauricio Dhable to sell his shares in and to resign from all roles connected with the zoo with immediate effect so that the sanctions applied to the zoo might be lifted. Prior to the sanctions, the zoo was extremely popular because it provided a unique experience of animals living in almost complete freedom. This resulted in substantial revenue that was, however, mostly used to



maintain the high level of animal welfare at the zoo. The freezing of funds brought into question the very survival of the animals, including some species protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

8. Considering his inclusion in Annex I of the Regulation 2402/2022 to be unjust – because he merely conducts business in the Empire of Barataria – and fearing for the life of his beloved animals, Emauricio Dhable decided to hire van Gend&Frankovich, the best law firm specialising in EU Law, for the purposes of lodging a direct action before the General Court of the European Union seeking the annulment of his inclusion in the Annex I of the Regulation 2402/2022. Further to the advice of his legal team, he decided to challenge simultaneously the Decision 65/2022, as well as the Royal Decree No. 76/2022 before the national courts.

9. Acting in record time, the General Court annulled Annex I of the Regulation 2402/2002 in so far as it relates to Emauricio Dhable, considering that the evidence supporting his inclusion was insufficient and that the Council could not rely on informal sources such as newspaper articles to justify this measure. The Council, shocked by the judgment that, in its opinion, departed from the EU Courts' settled case law, announced that it would lodge an appeal before the Court of Justice. Further, it sought immediately an interim measure suspending the effects of the General Court's judgment until the final judgment is rendered on the substance.

10. In the meantime, Emauricio Dhable's case before the national courts had reached the Supreme Court of the Kingdom of Macondo, the last instance court for this type of appeal. Having received the favourable judgment of the General Court, Emauricio Dhable argued before the Supreme Court of the Kingdom of Macondo that the national measures are illegal as they implement the annulled Annex I of the Regulation 2402/2022. Considering that the issues raised in case *E. Dhable v. The Crown* require clarification by the CJEU, the Supreme Court of the Kingdom of Macondo decided to stay the proceedings and to refer the following question:

“Should the annulment of the Annex I of the Regulation 2602/2022, established by the General Court, but not yet confirmed by the Court of Justice, be interpreted as



requiring the annulment, by the national courts, of national legislation and implementing acts, such as Royal Decree No. 76/2022 and Decision 65/2022, which regulate the same subject-matter as that Regulation?”

11. Besides his zoo, Emauricio Dhable has two other weak spots: his daughter, Pandora Dhable, and his one-of-a-kind superyacht, Hope-ium.

12. Pandora Dhable is a fun-loving Instagram influencer. Although she could rely on her father’s money, Pandora Dhable conducts a successful influencer career that took off in 2019 when her Instagram photographs attracted sponsorship from many EU based luxury brands.

13. Hope-ium is a 600 ft vessel registered under Legen flag. It has 5 decks, 3 swimming pools and a helicopter landing platform. Approximately 80 crew members are required to operate the yacht and serve the guests. Emauricio Dhable is very concerned with security so Hope-ium has a militarily-equipped escape boat and a mini-submarine capable of submerging to 80 meters. It is also fitted with a well-disguised missile detection system, missile launchers and other defence systems.

14. Pandora Dhable uses Hope-ium often – both for weekends with friends but also for photo shootings. Each post she makes on Instagram attracts thousands of followers: she earns money for advertising luxury goods and she receives expensive gifts such as leather goods, cosmetics and jewellery. Emauricio Dhable conducts many of his business meetings on Hope-ium. He likes to impress his business partners by flying them to the vessel by helicopter and throwing legendary VIP parties. When he feels it is good for business, he even charters the yacht to celebrities for a very moderate price.

15. In Spring 2022, when the Regulation 2402/2022 was adopted, Hope-ium entered the idyllic Meritaton Bay, in the southern region of the Grand Duchy of Signum – one of the richest EU Member States – for one of Emauricio Dhable’s famous business parties. Meritaton Bay is one of the largest bays in the European Union, known for its vibrating social life but also for its admirable pristine eco-system, home to several endangered species. The Roman Empire was the theme for the party and, although the captain of Hope-ium voiced



some concern about the stability of the ship, Emauricio Dhable had constructed a replica of the Colosseum on the vessel's third deck.

16. Signum authorities did not waste any time. Customs agents seized the vessel, not without resistance from the crew. Some of the crew were even arrested and the vessel was evacuated. Only a few Signum guards remained on-board awaiting specialized agents to arrive and bring the vessel to a port. However, due to a general strike in the Grand Duchy of Signum, the vessel remained without a crew in Meritaton Bay for several weeks.

17. During that period, a sudden storm created serious problems on the vessel, caused a huge oil spill, as well as the release of many dangerous substances from the vessel's defence systems. This caused an enormous ecological disaster: Meritaton Bay is the only reproduction location in the Mediterranean sea for Caretta Caretta turtles, a highly-endangered species; since Spring is their reproduction period, the oil spill resulted in the extinction of the entire Caretta Caretta turtle population. Other species, such as jellyfish, algae and seabirds also suffered severe consequences. This event was a huge scandal for the people of Signum, who are known for their environmental sensibilities and for their fondness for sunbathing vacations at Meritaton Bay. Several associations in Signum called for the environmental damage to be remedied as soon as possible. The association "Lawyers for the environment" requested the Meritaton Bay Environmental Agency to take immediate action and actively participated in the proceedings before that Agency.

18. Following that request, the Meritaton Bay Environmental Agency applied the national Environmental Protection Law, transposing Directive 2004/35, and adopted Decision 1979/2022 imposing on Emauricio Dhable, in his capacity of the owner of Hope-ium, a fine of 400 000 EUR for the environmental damage caused and requiring him to undertake immediate remedial measures that would cost several millions of euros.

19. Article 1(3)(a) of the Environmental Protection Law defines "environmental damage" as a "significant and measurable adverse change in the environment, including water, land and air damage and damage to endangered species". Article 3(3)(c) defines "occupational



activity” as “any activity carried out in the course of an economic activity, a business or an undertaking, irrespective of its private or public, for profit or non-profit character”.

20. Article 2 of the Environmental Protection Law provides that:

“1. Anyone who directly or indirectly causes environmental damage in connection with an occupational activity shall bear the legal liability in criminal, civil and administrative law for the effects of his activity on the environment.

2. The competent environmental authority may, at any time, require natural and legal persons responsible for environmental damage to:

a) take all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damaging factors in order to limit or to prevent further environmental damage and adverse effect on human health, or further impairment of services;

b) take all necessary remedial measures.

3. Anyone who directly or indirectly causes environmental damage in connection with an occupational activity shall be required to pay an environmental fine adjusted according to the seriousness of the damage of which he is the cause.”

21. Offended by the very suggestion that he is responsible for harming endangered species, Emauricio Dhable brought proceedings challenging Decision 1979/2022 before the Administrative Court of Meritaton in the Grand Duchy of Signum. .

22. Because of various issues related to the interpretation of EU law, the Administrative Court of Meritaton decided to stay the proceedings in *case E. Dhable v. Meritaton Bay Environmental Agency* and to refer the following question to the Court of Justice for a preliminary ruling:

“Does environmental damage caused by a pleasure vessel that is also used by its owner and his family members as a venue for business meetings, events and other purposes such as those in the main proceedings, fall within the scope of Directive 2004/35 as damage caused by an occupational activity within the meaning of Article 3(1) of that directive?”



Do Article 191 TFEU and Directive 2004/35 permit a national environmental protection agency to hold the owner of a vessel liable for environmental damage caused while that vessel was in the custody of State authorities and is it possible to impose a fine on the owner for the environmental damage caused, when he is not responsible for the pollution?”

23. In the meantime, Pandora Dhable was accepted into the Erasmus+ programme and is hoping to attend the University of Streber, located in Meritaton, in the Grand Duchy of Signum, this Autumn. Although she is a Baratarian national, she obtained Macondian nationality in 2017 by investing 5 million EUR into the Kingdom of Macondo under the Golden Passport Scheme. The scheme was put in place by the Macondian government in 2016 in order to generate more revenue for the state budget. Under the scheme, any foreign national who invests a minimum of 1 million EUR into the Kingdom of Macondo and who has no previous criminal convictions shall obtain the nationality of that country. However, the nationality obtained in this way is conditional only and is subject to review five years after it has been granted. Only if the initial conferral is confirmed, the nationality is granted for life. Under Article 5 of the Macondian Golden Passport Act of 2016, the reasons to refuse to confirm the initial naturalization are as follows:

“5. The nationality granted conditionally shall be withdrawn on review demonstrating that any of the following conditions is fulfilled:

- a) The individual has withdrawn the initial investment;
- b) The individual or associated persons has(ve) been the object of criminal sanctions or restrictive measures;
- c) The individual has engaged in behaviours that are incompatible with the values of the Kingdom of Macondo or his connection to the country has caused reputational damage to the Kingdom.”

24. Pandora Dhable’s carefree life came to an abrupt end when her father was included in Annex I of the Regulation 2402/2022. She lost the majority of her Instagram followers – and consequently, her main source of income – was the object of a ‘cancel culture’ action and even her landlord required her to vacate her rental villa, which she had rented only five months before the listing and is located in one of the most affluent areas of Meritaton Bay where she took some of her most liked and sponsored Instagram photos. To make matters



worse, just one week before her five year nationality review period was about to elapse, the Ministry of Foreign Affairs of the Kingdom of Macondo informed her that, after an accelerated review, her nationality has been withdrawn, with immediate effect pursuant to Article 5(b) and (c) of the Golden Passport Act. Consequently, the University of Streber informed her that, given that the Empire of Barataria does not fall under Article 19 of Regulation 2021/817 of the European Parliament and of the Council of 20 May 2021 establishing Erasmus+, and because she no longer possess the nationality of an EU Member State, her participation in Erasmus+ will have to be terminated as she no longer fulfils the conditions to participate in the programme.

25. Pandora Dhable realized that her life will never be the same again because of this unjust loss of her EU citizenship and, after several rejected appeals, decided to lodge a final appeal before the Supreme Administrative Court of the Kingdom of Macondo.

26. Considering that the case *P. Dhable v. The Crown* involved a question of EU Law that had not yet been sufficiently clarified by the Court of Justice, the Supreme Administrative Court of the Kingdom of Macondo decided to stay the proceedings and refer the following question:

“Are Articles 20 and 21 TFEU, read in the light of Article 7 of the Charter, to be interpreted as precluding the legislation of a Member State that provides for the loss of the nationality of that Member State in case of an association with a person sanctioned by the European Union or in case of reputational damage to that Member State, which entails, in the case of persons who have exercised their freedom of movement, but who are not also nationals of another Member State, the loss of their EU citizenship and the rights attaching thereto without an individual examination, based on the principle of proportionality, of the consequences of that loss for the situation of those persons from the point of view of EU law?”

27. Considering it prudent to ensure the coherence of their representation as applicants, Emauricio and Pandora Dhable decided to both be represented by van Gend&Frankovich. Bearing in mind a close historical relationship between the Kingdom and Macondo and the



Grand Duchy of Signum, the two Member States decided to be jointly represented as defendants by their state agents.

28. The orders for reference were successively received by the Registrar of the Court who assigned them case numbers M-23/22, M-33/22 and M-43/22. In order to ensure the most efficient running of the written and oral phases of the procedure, the Court has decided to join the cases. In accordance with article 23 of the Statute of the Court of Justice, the Registrar notified the parties that Observations are to be submitted to the Court by 23:59 CET on November 25, 2022.