

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on the case-law of the European Convention on Human Rights

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European Union law in the Court's case-law

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the Court's case-law on European Union law. It should be read in conjunction with the case-law guides by Article, to which it refers systematically.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions*.

The Court's judgments and decisions serve not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the European Convention on Human Rights (hereafter "the Convention" or "the European Convention"), thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 1978, § 154, and more recently, *Jeronovičs v. Latvia* [GC], 2016, § 109).

The mission of the system set up by the Convention is thus to determine issues of public policy in the general interest, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 2012, § 89).

Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 156, and more recently, *N.D. and N.T. v. Spain* [GC], 2020, § 110).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle "imposes a shared responsibility between the States Parties and the Court" as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], 2022, § 324).

* The hyperlinks to the cases cited in the electronic version of the Guide direct the reader to the text in English and/or French (the two official languages of the Court) of the judgments and decisions delivered by the Court and the decisions and reports of the former European Commission of Human Rights ("the Commission"). Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

Introduction

1. This Guide has been devised as a reference tool for the Court's case-law concerning European Union law. It is divided into three chapters, corresponding to the different legal issues raised before the Court in that regard. It refers to the relevant case-law rather than reproducing or commenting on it. In particular, wherever possible, it refers to recent judgments and decisions in which the applicable principles are summarised.

2. Twenty-seven of the States Parties to the Convention are also member States of the European Union[1], and have transferred certain competences to that international organisation. The European Union is not a Party to the Convention. Accordingly, the standards and measures adopted by its institutions cannot be challenged *per se* before the Court. Nevertheless, the Court regularly receives applications which directly or indirectly concern European Union acts or national measures implementing European Union law.

3. The Guide therefore seeks to elucidate how the Court deals with such applications (Chapter 1). It also examines the Court's response to the issues raised before it concerning proceedings before the Court of Justice of the European Union ("CJEU") (Chapter 2) and explores more broadly the matters and cases in the context of which the Court has referred to European Union law in its reasoning (Chapter 3).

I. Scope of the Court's review of measures concerning European Union law

Article 1 of the Convention

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

Article 35 of the Convention

> "...
>
> 3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> (a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; ...
>
> 4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings."

[1] Prior to the entry into force of the Lisbon Treaty on 1 December 2009, the organisation was known as the European Communities (EC), and reference was made to Community law and to the Court of Justice of the European Communities (CJEC). Currently, reference is made to the European Union (EU), European Union law and the Court of Justice of the European Union (CJEU). For ease of reading, only the current terminology is used in the Guide, even where the cases referred to predate the Lisbon Treaty.

A. The Court's lack of jurisdiction to examine applications against the European Union, its acts and its institutions

4. The Admissibility Guide sets out the principles concerning the Court's jurisdiction *ratione personae*, and in particular those concerning the possible responsibility of States Parties on account of acts or omissions linked to their membership of an international organisation.

5. According to those principles, as the European Union is not a Party to the Convention, it is not itself held responsible under the Convention for proceedings before, or decisions of, its organs (*Confédération française démocratique du travail v. the European Communities*, Commission decision, 1978; *M. & Co. v. the Federal Republic of Germany*, Commission decision, 1990; *Matthews v. the United Kingdom* [GC], 1999, § 32). Applications brought directly against the European Union and its institutions are therefore declared inadmissible as being incompatible *ratione personae* with the Convention (*Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands* (dec.), 2009; *Lechouritou and Others v. Germany and 26 other Member States of the European Union* (dec.) [Committee], 2012).

6. Similarly, in a case concerning alleged violations of the Convention on account of the dismissal of a European Commission official, the Court found that the applicant did not fall within the jurisdiction of the respondent States for the purposes of Article 1 of the Convention. It noted that only the EU bodies had dealt with the dispute between the applicant and the European Commission, that none of the States concerned had intervened at any stage, directly or indirectly, in the dispute, and that no act or omission on the part of those States or their authorities was capable of engaging their responsibility under the Convention. The Court held that the alleged violations of the Convention could not be attributed to the States concerned, and declared the application inadmissible as being incompatible *ratione personae* with the Convention (*Connolly v. 15 member States of the European Union* (dec.), 2008; see also *La société Etablissement Biret et CIE S.A. v. 15 member States of the European Union* (dec.), 2008; *Andreasen v. the United Kingdom and 26 other member States of the European Union* (dec.) [Committee], 2015, §§ 71-72).

7. In the case of *Segi and Gestoras Pro-Amnistía and Others v. Germany, Austria, Belgium, Denmark, Spain, Finland, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, the United Kingdom and Sweden* (dec.), 2002, two associations and their spokesperson complained about two common positions adopted by the Council of the European Union on combating terrorism. The Court declared the application inadmissible, finding that the applicants could not claim the status of victims of a violation of the Convention within the meaning of Article 34 of the Convention. The Court considered that the first common position was not directly applicable in the member States and could not form the direct basis for any criminal or administrative proceedings against individuals, especially as it did not mention any particular organisation or person. As to the second common position challenged by the applicants, the Court noted that it contained only an obligation for member States to cooperate which was not directed at individuals and did not affect them directly. In the Court's view, the mere fact of featuring on the list of "groups or entities involved in terrorist acts" constituted a link that was much too tenuous to justify application of the Convention.

B. States' responsibility as regards EU primary law

8. States remain responsible in principle as regards European Union primary law (*Matthews v. the United Kingdom* [GC], 1999, § 33).

9. The above case concerned the inability of the applicant, a resident of Gibraltar, to register to vote in the 1994 European Parliament elections. The Court noted that when it had been decided to elect representatives to the European Parliament by direct universal suffrage, it had been specified that the United Kingdom would apply the relevant provision only within the United Kingdom, and thus not in Gibraltar. However, in the Court's view, with the extension of the European Parliament's

powers under the Maastricht Treaty, the United Kingdom should have amended its legislation in order to secure the right to free elections in Gibraltar. The United Kingdom had entered freely into the Maastricht Treaty; therefore, together with the other Parties to that Treaty, it was responsible *ratione materiae* under the Convention for its consequences.

C. Review of national measures implementing EU law: the presumption of equivalent protection

10. Applications brought against member States concerning their implementation of EU law are not in principle incompatible *ratione personae* with the Convention (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 137; *Michaud v. France*, 2012, § 102; *Avotiņš v. Latvia* [GC], 2016, § 101).

1. The principle

11. Although the Convention does not prohibit Contracting Parties from transferring sovereign power to an international (including a supranational) organisation in order to pursue cooperation in certain fields of activity, the States Parties nevertheless remain responsible under Article 1 of the Convention for all acts and omissions of their organs, including those stemming from the necessity to comply with international legal obligations (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 153).

12. However, State action taken in compliance with such legal obligations is justified as long as the relevant organisation is considered to protect fundamental rights in a manner which can be considered at least equivalent to the protection provided by the Convention. By "equivalent" the Court means "comparable" (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 155; see also, as regards the origin of this concept, *M. & Co. v. the Federal Republic of Germany*, Commission decision, 1990). Any such finding of "equivalence" is susceptible to review in the light of any relevant change in fundamental rights protection (*Avotiņš v. Latvia* [GC], 2016, § 101).

13. If such equivalent protection is considered to be provided by the organisation, the presumption will be that a State has not departed from the requirements of the Convention when it does no more than implement legal obligations flowing from its membership of the organisation. However, any such presumption can be rebutted if, in the circumstances of a particular case, it is considered that the protection of Convention rights was manifestly deficient (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 156).

14. This presumption of equivalent protection is intended, in particular, to ensure that a State Party is not faced with a dilemma when it is obliged to rely on the legal obligations incumbent on it as a result of its membership of an international organisation to which it has transferred part of its sovereignty, in order to justify its actions or omissions arising from such membership *vis-à-vis* the Convention. It also serves to determine in which cases the Court may, in the interests of international cooperation, reduce the intensity of its supervisory role, as conferred on it by Article 19 of the Convention, with regard to observance by the States Parties of their engagements arising from the Convention. It follows from these aims that the Court will accept such an arrangement only where the rights and safeguards it protects are given protection comparable to that afforded by the Court itself (*Michaud v. France*, 2012, § 104).

15. Thus, in the context of the former "first pillar" of the European Union, the Court held that the protection of fundamental rights afforded by the legal system of the European Union was in principle equivalent to that for which the Convention provided. In arriving at that conclusion it found, firstly, that the European Union offered equivalent protection of the substantive guarantees. In so finding it took into account, in particular, the provisions of Article 52 § 3 of the Charter of

Fundamental Rights of the European Union, according to which, in so far as the rights contained in the Charter correspond to rights guaranteed by the Convention, their meaning and scope are the same, without prejudice to the possibility for EU law to provide more extensive protection. In examining whether, in the case before it, it can still consider that the protection afforded by EU law is equivalent to that for which the Convention provides, the Court is mindful of the importance of compliance with the rule laid down in Article 52(3) of the Charter (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, §§ 159-165; *Avotiņš v. Latvia* [GC], 2016, §§ 102-103). This reasoning has been applied to other matters which, at the relevant time, came within the ambit of the other two pillars of the European Union (see, as regards the European arrest warrant, coming within the third pillar, *Pirozzi v. Belgium*, 2018, § 62). In contrast to EU law, the Court has found that European Economic Area (EEA) law does not, in principle, enjoy a presumption of equivalent protection (*Konkurrenten.no AS v. Norway* (dec.), 2019, §§ 43-45; *Norwegian Confederation of Trade Unions (LO) and Norwegian Transport Workers' Union (NTF) v. Norway*, 2021, §§ 105-107).

Secondly, the Court has recognised that the mechanism provided for by European Union law for supervising observance of fundamental rights, in so far as its full potential has been deployed, also affords protection comparable to that for which the Convention provides. On this point, the Court has attached considerable importance to the role and powers of the CJEU, despite the fact that individual access to that court is far more limited than access to this Court under Article 34 of the Convention (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, §§ 160-165; *Michaud v. France*, 2012, §§ 106-111; *Avotiņš v. Latvia* [GC], 2016, § 104).

2. Conditions of application

16. The application of the presumption of equivalent protection in the legal system of the European Union is subject to two cumulative conditions, namely the absence of any margin of manoeuvre on the part of the domestic authorities and the deployment of the full potential of the supervisory mechanism provided for by EU law (*Avotiņš v. Latvia* [GC], 2016, § 105).

a. Absence of margin of manoeuvre for the domestic authorities

17. The alleged interference with a right protected by the Convention must be a matter of an international legal obligation for the respondent State, to the exclusion of any discretion or margin of manoeuvre on the part of the domestic authorities (*Avotiņš v. Latvia* [GC], 2016, § 105).

18. The question whether the authority or court concerned had any margin of appreciation will depend on the circumstances of the case and must be examined by the Court on a case-by-case basis.

19. *Implementation of a regulation.* Where it is a matter of compliance by the national authority with a regulation, the Court has observed that regulations are generally applicable and binding in their entirety. They are directly applicable, meaning that no implementing legislation is necessary (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 145). The Court observed in that case that the Supreme Court had been obliged to request a preliminary ruling from the CJEU concerning the interpretation of the regulation in question, that the CJEU ruling was binding on the Supreme Court and that it had determined the domestic proceedings. The Court therefore found that the impugned interference with the right to property had not been the result of an exercise of discretion by the national authorities, either under EU or domestic law, but rather amounted to compliance by the State with its legal obligations flowing from EU law (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, §§ 147-148; see also, in the context of the unlawful removal of a child, *Povse v. Austria* (dec.), 2013, § 79, and regarding the enforcement of a judgment given in another European Union member State, *Avotiņš v. Latvia* [GC], 2016, §§ 106-107).

20. By contrast, in *M.S.S. v. Belgium and Greece* [GC], 2011, §§ 339-340, the Court considered that the first condition for application of the presumption was not met, since the "sovereignty" clause of the so-called Dublin Regulation allowed the Belgian authorities to refrain from transferring the applicant if they considered that the receiving country was not fulfilling its Convention obligations (see, to similar effect, *Tarakhel v. Switzerland*[2] [GC], 2014, § 90).

21. *Implementation of a directive*. Where the measure at issue is taken in order to give effect to a directive, which is binding on the member States as regards the result to be achieved but leaves it to them to choose the means and manner of achieving it, the question of the competent authority's margin of manoeuvre is of even greater relevance (*Michaud v. France*, 2012, § 113). In that case, however, the Court did not address the issue whether the respondent State's possible margin of manoeuvre in complying with its obligations resulting from its European Union membership obstructed the application of the presumption of equivalent protection (*ibid*.). By contrast, in *Ilias and Ahmed v. Hungary*, [GC], 2019, §§ 95-97, the Court considered that the directives comprising the Common European Asylum System did not impose on the authorities of the respondent State an obligation to act as they had with regard to the applicants. The national authorities had exercised a discretion granted under EU law, and the presumption of equivalent protection was therefore not applicable in the case at issue.

22. *Implementation of a framework decision*. In its judgment in *Bivolaru and Moldovan v. France*, 2021, § 114, which concerned the implementation of the Framework Decision on the European arrest warrant, the Court considered that the executing judicial authority could not be said to enjoy an autonomous margin of manoeuvre in deciding whether or not to execute a European arrest warrant, since the discretionary power to assess the facts and circumstances and the legal consequences which they entailed had to be exercised within the framework strictly delineated by the CJEU's case-law and in order to ensure the execution of a legal obligation in full compliance with European Union law (see also *Pirozzi v. Belgium*, 2018, § 62).

23. *Implementation of a CJEU judgment*. In a case in which the national authority was required to comply with a CJEU judgment in *infringement proceedings* and with a directive, the Court noted that the obligation to comply with the CJEU's judgment appeared to relate solely to the result to be achieved and not to the means of achieving it, and that the national authorities had retained some scope to negotiate with the European Commission regarding the steps to be taken. Accordingly, the presumption of equivalent protection did not apply (*O'Sullivan McCarthy Mussel Development Ltd v. Ireland*, 2018, § 112). However, the Court specifically left open the question whether a judgment in the context of infringement proceedings could in other circumstances be regarded as leaving no margin of manoeuvre to the member State in question (*ibid.*).

b. Deployment of the full potential of the supervisory mechanism provided for by EU law

24. For the presumption of equivalent protection to apply, the full potential of the mechanism provided for by EU law for supervising observance of fundamental rights must also have been deployed (*Michaud v. France*, 2012, § 115; *Avotiņš v. Latvia* [GC], 2016, § 105).

25. The Court deemed this condition to have been satisfied where the domestic courts had applied to the Court of Justice of the European Union for a preliminary ruling in the case at issue (*Povse v. Austria* (dec.), 2013, §§ 81 and 83) or in another case concerning the same matter (*Willems v. the Netherlands* (dec.), 2021, §§ 33-34).

[2] Switzerland is not a member State of the European Union. However, it is bound by certain EU legal instruments, including the Dublin Regulation, under the terms of an association agreement with the European Union (*Tarakhel v. Switzerland* [GC], 2014, § 88).

26. This condition should be applied without excessive formalism and taking into account the specific features of the supervisory mechanism in question. It is not appropriate to make the implementation of the presumption of equivalence subject to a requirement for the domestic court to request a ruling from the CJEU in all cases without exception, including those cases where no genuine and serious issue arises with regard to the protection of fundamental rights by EU law, or those in which the CJEU has already stated precisely how the applicable provisions of EU law should be interpreted in a manner compatible with fundamental rights (*Avotiņš v. Latvia* [GC], 2016, § 109).

27. The question whether the full potential of the supervisory mechanisms provided for by European Union law has been deployed is assessed by the Court in the light of the specific circumstances of each case (*Avotiņš v. Latvia* [GC], 2016, § 111). This review differs from that which it conducts in order to determine whether the refusal to refer the matter for a preliminary ruling constituted in itself a violation of Article 6 § 1 of the Convention (*ibid.*, § 110; see, on this issue, Chapter II.B. below).

28. The Court held, for instance, that this condition had been met where the applicant had not requested that the matter be referred to the CJEU for a preliminary ruling and had not advanced any specific argument concerning the interpretation of the EU regulation in question and its compatibility with fundamental rights, meaning that it had not been necessary to request a preliminary ruling (*Avotiņš v. Latvia* [GC], 2016, § 111). Similarly, the condition was found to have been satisfied in a case where no serious issue arose with regard to the interpretation of the framework decision in question or its compatibility with fundamental rights (*Bivolaru and Moldovan v. France*, 2021, § 115).

29. By contrast, this condition was found not to have been satisfied where the highest court decided not to refer the question before it to the CJEU for a preliminary ruling, even though the CJEU had never examined the Convention rights in issue (*Michaud v. France*, 2012, § 115), or where a genuine and serious issue arose with regard to the protection of fundamental rights by EU law (*Bivolaru and Moldovan v. France*, 2021, § 131).

3. Where the protection was not manifestly deficient in the circumstances of the case

30. Where the presumption of equivalent protection has been established it can be rebutted if, in the circumstances of a particular case, the protection of Convention rights is considered to have been manifestly deficient (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 156).

31. In *Avotiņš v. Latvia* [GC], 2016, §§ 121-122, the Court noted that the Latvian Supreme Court had not examined whether a remedy had actually been available to the applicant, although both Article 6 § 1 of the Convention and the EU regulation applicable in the case required it to do so. Accordingly, the Court found that the approach of the Latvian Supreme Court, which reflected a literal and automatic application of the regulation in question, could in theory lead to a finding that the protection afforded had been manifestly deficient such that the presumption of equivalent protection of the rights of the defence guaranteed by Article 6 § 1 was rebutted. Nevertheless, in the specific circumstances of the case, and although this shortcoming was regrettable, the Court did not consider that the protection afforded had been manifestly deficient, since it was clear from the information provided to the Court that an effective remedy had indeed been available and that the applicant had not made use of it.

32. On the other hand, in *Bivolaru and Moldovan v. France*, 2021, §§ 117-128, which concerned the execution by the French authorities of a European arrest warrant issued by the Romanian authorities, the Court found for the first time that the protection of the rights guaranteed by the

Convention had been manifestly deficient[3]. Following an in-depth analysis of its own case-law and of the factual information provided by the authorities, the Court found that the competent authority had had a sufficiently solid factual basis to establish the existence of a real risk to the applicant of being exposed to treatment contrary to Article 3 of the Convention if he were surrendered to the Romanian authorities under the European arrest warrant, on account of the poor conditions of detention in Romania. The Court therefore considered that the presumption of equivalent protection was rebutted and found a violation of Article 3 of the Convention.

4. Consequence of application of the presumption of equivalent protection

33. Where the Court finds that the presumption of equivalent protection applies and the protection of the rights guaranteed by the Convention was not manifestly deficient in the particular circumstances of the case, it concludes that there has been no violation of the Convention, without the need for further examination (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 166; *La société Etablissement Biret et CIE S.A. v. 15 member States of the European Union* (dec.), 2008; *Povse v. Austria* (dec.), 2013, §§ 87-89; *Avotiņš v. Latvia* [GC], 2016, §§ 125-127; *Willems v. the Netherlands* (dec.), 2021, § 37).

D. Review of national measures applying EU law in the absence of a presumption of equivalent protection

34. Where the impugned acts do not strictly fall within the international legal obligations of the respondent State, the presumption does not apply and the State remains fully responsible under the Convention (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 157; *M.S.S. v. Belgium and Greece* [GC], 2011, §§ 340 et seq.; *Ilias and Ahmed v. Hungary* [GC], 2019, § 97; see also, by way of example, *Cantoni v. France*, 1996, concerning the implementation of a directive).

The same is true where the presumption of equivalent protection does not apply because the full potential of the mechanism provided for by European Union law for supervising observance of fundamental rights was not deployed (*Michaud v. France*, 2012, § 116) or where, in the circumstances of the case, the protection of rights was manifestly deficient (*Bivolaru and Moldovan v. France*, 2021, § 126).

35. However, where the Court has been called upon to rule on the existence of a general-interest objective to justify interference with a right arising out of the application of European Union law, it has found that the general interest pursued by the impugned measure lies in compliance with legal obligations flowing from the State's membership of the European Union, which the Court recognises as a legitimate interest of considerable weight (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 150; see also *Coopérative des agriculteurs de la Mayenne and Coopérative laitière Maine-Anjou v. France* (dec.), 2006; *Michaud v. France*, 2012, § 100; *Lohuis and Others v. the Netherlands* (dec.), 2013, § 54; *O'Sullivan McCarthy Mussel Development Ltd v. Ireland*, 2018, § 109).

[3] In *Pirozzi v. Belgium*, 2018, which also concerned the execution of a European arrest warrant, the Court found that the protection afforded had not been manifestly deficient in the circumstances of the case (§§ 67-71).

E. Review of compatibility of national measures with EU law and interpretation of EU law

36. The Court is not competent to review the compatibility of a national measure or decision with European Union law (*K.I. v. France*, 2021, § 123; see also, to similar effect, *Parti nationaliste basque – Organisation régionale d'Iparralde v. France*, 2007, § 48; *Occhetto v. Italy* (dec.), 2013, § 54; *Jeunesse v. the Netherlands* [GC], 2014, § 110; *Avotiņš v. Latvia* [GC], 2016, § 100) or to rule on the CJEU's interpretation of EU law (*Lechouritou and Others v. Germany and 26 other member States of the European Union* (dec.) [Committee], 2012). It is primarily for the national authorities, notably the courts, to interpret and apply domestic law, if necessary in conformity with EU law, the Court's role being confined to ascertaining whether the effects of such adjudication are compatible with the Convention (*Jeunesse v. the Netherlands* [GC], 2014, § 110; *K.I. v. France*, 2021, § 123; *Büttner and Krebs v. Germany* (dec.), 2024, § 59).

37. Furthermore, it is the task of the domestic courts to interpret and apply European Union law, if necessary after requesting a preliminary ruling from the CJEU. The Court's jurisdiction is limited to reviewing compliance with the requirements of the Convention. Consequently, it is not the Court's task to assess whether the domestic courts correctly interpreted the applicable European Union law, unless their interpretation appears arbitrary or manifestly unreasonable (*Avotiņš v. Latvia* [GC], 2016, § 100; *Paci v. Belgium*, 2018, § 73; *Muzamba Oyaw v. Belgium* (dec.), 2017, § 37; *Arrozpide Sarasola and Others v. Spain*, 2018, § 124).

F. Examples of the Court's review of national measures applying European Union law

38. The examples given below are intended to show how the Court has assessed the Convention compliance of national measures taken by the member States to apply European Union law.

1. Return of asylum-seekers from one EU member State to another

39. The return of asylum-seekers by one European Union member State to another member State which is responsible for dealing with the asylum application under the so-called Dublin Regulation[4] may be contrary to the prohibition of inhuman or degrading treatment where there are structural deficiencies in the asylum system and the reception conditions (*M.S.S. v. Belgium and Greece* [GC], 2011), or in view of the personal situation and extreme vulnerability of the persons concerned (*Tarakhel v. Switzerland* [GC], 2014, concerning a family with small children in respect of whom the Swiss authorities did not obtain individual guarantees in advance from the Italian authorities that they would be taken charge of in a manner suited to the age of the children and that the family would be kept together; see, conversely, *A.M.E. v. the Netherlands* (dec.), 2015, where the applicant, a healthy young man, had not demonstrated that he was at risk of treatment severe enough to come within the scope of Article 3 of the Convention if he were returned to Italy, and *Ojei v. the Netherlands* (dec.), 2017, concerning the situation in Malta).

2. Mutual recognition mechanisms: judicial cooperation between EU member States in civil and criminal matters

40. The Court has asserted its commitment to European cooperation and has considered the creation of an area of freedom, security and justice in Europe, and the adoption of the means

[4] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing 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 third-country national or a stateless person.

necessary to achieve it, to be wholly legitimate in principle from the standpoint of the Convention (*Avotiņš v. Latvia* [GC], 2016, § 113). Thus, the principles concerning the presumption of equivalent protection (see Chapter I.C above) apply to all the mutual recognition mechanisms provided for by European Union law (*Avotiņš v. Latvia* [GC], 2016, § 113; *Bivolaru and Moldovan v. France*, 2021, § 100). It follows that where the domestic authorities have no discretion in giving effect to EU law, the presumption of equivalent protection applies. This is the case where the mutual recognition mechanisms require the court to presume that the observance of fundamental rights by another member State has been sufficient (*Avotiņš v. Latvia* [GC], 2016, § 115).

41. However, that presumption may be rebutted in a particular case. Although it takes into account, in a spirit of complementarity, the manner in which these mechanisms operate and in particular the aim of effectiveness which they pursue, the Court must nevertheless verify that the principle of mutual recognition is not applied automatically and mechanically to the detriment of fundamental rights (*Avotiņš v. Latvia* [GC], 2016, § 116).

42. In this spirit, where the courts of a State which is both a Contracting Party to the Convention and a member State of the European Union are called upon to apply a mutual recognition mechanism established by EU law, they must give full effect to that mechanism where the protection of Convention rights cannot be considered manifestly deficient (*Avotiņš v. Latvia* [GC], 2016, § 116).

43. However, if a serious and substantiated complaint is raised before them to the effect that the protection of a Convention right has been manifestly deficient and that this situation cannot be remedied by European Union law, they cannot refrain from examining that complaint on the sole ground that they are applying EU law (*Avotiņš v. Latvia* [GC], 2016, § 116, and *De Sousa v. Portugal* (dec.), 2021). In such cases they must read and apply the rules of EU law in accordance with the Convention (*Pirozzi v. Belgium*, 2018, § 64).

a. Enforcement of a judgment handed down within the European Union

44. Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "Brussels I Regulation") determines the courts' competence in civil and commercial matters. In principle, under this Regulation, the judgments given in one European Union member State are recognised in the other member States without the need for any procedure except in cases of dispute. The Brussels I Regulation was repealed and replaced by Regulation (EU) No 1215/2012 (the "Brussels I *bis*" Regulation), which entered into force on 10 January 2015.

45. In the case of *Avotiņš v. Latvia* [GC], 2016, the applicant argued that in ordering the enforcement of a court judgment given in another European Union member State, which in his view was clearly defective, the Latvian Supreme Court had infringed his right to a fair hearing under Article 6 § 1 of the Convention. The Court considered that a decision to enforce a foreign judgment could not be regarded as compatible with the requirements of that provision if it was taken without the unsuccessful party having been afforded any opportunity of effectively asserting a complaint as to the unfairness of the proceedings leading to that judgment, either in the State of origin or in the State addressed (§ 98). The Court therefore had to determine whether the review conducted by the Latvian Supreme Court in the case at issue had been sufficient for the purposes of Article 6 § 1 of the Convention. In that regard, the Court held that the presumption of equivalent protection was applicable in the case at issue (see, in this regard, Chapter I.C. above). In the circumstances of the case it did not consider that the protection of fundamental rights had been manifestly deficient such that the presumption of equivalent protection was rebutted. It therefore found that there had been no violation of the Convention.

46. The Court also had occasion to find that the competent authorities for the purposes of the Brussels I Regulation had failed in their obligation to assist the applicant in obtaining the

enforcement of a judgment in his favour, and found a violation of Article 6 § 1 of the Convention on that account (*Terebus v. Portugal*, 2014).

b. European arrest warrant

47. Mindful of the importance of the mutual recognition mechanisms for the creation of an area of freedom, security and justice in Europe, the Court has ruled that the system of the European arrest warrant[5] is not in itself incompatible with the Convention (*Pirozzi v. Belgium*, 2018, § 60). However, the execution or refusal to execute such a warrant may raise various issues under the Convention.

i. Article 2 of the Convention and positive obligations

48. A State's responsibility may be engaged under Article 2 of the Convention where that State refuses to execute a European arrest warrant. The case of *Romeo Castaño v. Belgium*, 2019, concerned the Belgian authorities' refusal to surrender N.J.E. to the Spanish authorities, which had issued a European arrest warrant, on the grounds that there were serious reasons to believe that N.J.E. would be subjected to treatment contrary to Article 3 of the Convention if she were surrendered to the Spanish authorities. Relying on the procedural limb of Article 2 of the Convention, the applicants alleged that in refusing to surrender N.J.E. to the Spanish authorities despite her suspected involvement in the murder of their relative, the Belgian authorities had prevented her from being prosecuted in Spain.

49. The Court considered it necessary to examine whether the refusal by the Belgian authorities to cooperate had been based on legitimate grounds (§ 82). It reiterated that in the context of execution of a European arrest warrant by an EU member State, the mutual recognition mechanism should not be applied automatically and mechanically, to the detriment of fundamental rights (§ 84). In view of the presumption of observance of fundamental rights by the issuing State which underpinned the system of mutual trust between EU member States, the refusal to surrender N.J.E. had to be supported by detailed evidence of a clear threat to her fundamental rights capable of rebutting that presumption. In the case at issue, the Belgian courts had justified their decision to refuse execution of the European arrest warrant issued by the Spanish authorities by reference to the risk that if she were surrendered N.J.E. would be detained in Spain in conditions contrary to Article 3 of the Convention. The Court found that the reason given might constitute a legitimate ground for refusing execution of the European arrest warrant. Nevertheless, the finding that such a risk existed had to have a sufficient factual basis (§ 85). Taking the view that, in the absence of a detailed, updated examination of the situation, this was not the case, the Court concluded that the Belgian State had failed in its duty to cooperate under the procedural limb of Article 2 of the Convention and that there had therefore been a violation of Article 2 (§§ 90-91).

50. On the other hand, in the case of *Gray v. Germany*, 2014, §§ 58 and 93, concerning the refusal by the German authorities to execute a European arrest warrant, the Court found that there had been no violation of the procedural limb of Article 2 of the Convention. It noted that, in reality, the applicants complained about the fact that the doctor responsible for their father's death had been convicted in Germany, and not in the United Kingdom where he might have faced a heavier penalty (§ 93). In the Court's view, the German authorities had provided for effective remedies with a view to determining the cause of the applicants' father's death as well as the doctor's responsibility in that regard. Moreover, there was nothing to establish that the criminal investigations and proceedings instituted on the initiative of the German authorities in relation to the death had fallen short of the procedural guarantees inherent in Article 2 of the Convention (§ 95).

[5] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

ii. Article 3 of the Convention

51. In the case of *Bivolaru et Moldovan v. France*, 2021, which concerned the execution by the French authorities of a European arrest warrant issued by the Romanian authorities, the applicants argued that execution of the warrant would subject them to inhuman and degrading treatment contrary to Article 3 of the Convention on account of the conditions of detention in the prisons where they would be held in Romania.

52. With regard to the second applicant, the Court considered that the French authorities had had a sufficiently solid factual basis, deriving in particular from the Court's own case-law, to establish the existence of a real risk to the applicant of being exposed to inhuman or degrading treatment on account of his conditions of detention in Romania. The Court therefore concluded that the protection of fundamental rights had been manifestly deficient, with the result that the presumption of equivalent protection was rebutted. The surrender of the applicant to the Romanian authorities had therefore amounted to a violation of Article 3 of the Convention (§ 126).

53. However, with regard to the first applicant, who had been granted refugee status by the Swedish authorities, there was nothing to suggest that he would still be at risk of persecution in Romania (§ 141). Furthermore, the applicant's description of the possible conditions of detention in Romania had not been sufficiently detailed or substantiated to constitute prima facie evidence of a real risk of treatment contrary to Article 3 in the event of his surrender to the Romanian authorities (§ 144). Hence, the French authorities had not had a sufficiently solid factual basis to establish the existence of a real risk of a breach of Article 3 of the Convention and to refuse execution of the European arrest warrant on that ground (§§ 142 and 145). The Court therefore found that there had been no violation of that provision (§ 146).

54. In the case of *Ignaoua and Others v. the United Kingdom* (dec.), 2014, the applicants alleged that if they were surrendered to the Italian authorities under the European arrest warrant issued in respect of them, they would run a risk of being deported to Tunisia, where they risked being tortured and subjected to inhuman and degrading treatment. The Court reaffirmed its case-law, finding that the indirect removal of the applicants to an intermediary country which was also a Contracting State did not affect the responsibility of the United Kingdom to ensure that the applicants were not, as a result of its decision to surrender, exposed to treatment contrary to Article 3 of the Convention (§ 50). However, in the Court's view, the mutual trust and confidence underpinning measures of police and judicial cooperation among EU member States had to be accorded some weight (§ 55). The Court therefore concluded, in the circumstances of the case, that the applicants had failed to provide evidence rebutting the assumption that the Italian authorities would comply with their Convention obligations. It followed that the surrender of the applicants to Italy did not disclose any appearance of a violation of Article 3 of the Convention (§ 59).

iii. Article 5 § 1 of the Convention

55. The observance of a "procedure prescribed by law" within the meaning of Article 5 § 1 of the Convention includes compliance with European Union law (*Paci v. Belgium*, 2018, § 64; *Pirozzi v. Belgium*, 2018, §§ 44-51; *West v. Hungary* (dec.), 2019, § 54).

56. In the case of *Giza v. Poland* (dec.), 2012, the applicant alleged that his prison term was *de facto* longer in Poland, where he was serving his sentence following his transfer to the Polish authorities by the Belgian authorities under a European arrest warrant. In his view, this amounted to a violation of Article 5 § 1 of the Convention. The Court reiterated that the possibility of a longer period of imprisonment in the administering State did not in itself render the deprivation of liberty arbitrary as long as the sentence to be served did not exceed the sentence imposed in the criminal proceedings in the sentencing State (§ 23).

57. The case of *De Sousa v. Portugal* (dec.), 2021, concerned the lawfulness of the deprivation of liberty of the applicant, who had been detained with a view to her surrender to the Italian authorities following the decision of the Portuguese authorities declaring the European arrest warrant enforceable. In the Court's view, it did not appear in the case at issue that the principle of mutual recognition had been applied to the detriment of the applicant's fundamental rights (§ 88).

iv. Article 6 of the Convention

58. Like standard extradition proceedings, the procedure for execution of a European arrest warrant does not come within the scope of application of Article 6 of the Convention, as it does not involve the determination of civil rights and obligations or of a criminal charge (*Monedero Angora v. Spain* (dec.), 2008; *West v. Hungary* (dec.), 2019, §§ 65-66).

59. However, an issue may, exceptionally, be raised under Article 6 by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country (*Stapleton v. Ireland* (dec.), 2010, § 25; *Pirozzi v. Belgium*, 2018, § 57).

60. The case of *Stapleton v. Ireland* (dec.), 2010, concerned the surrender of the applicant to the United Kingdom authorities by the Irish authorities under a European arrest warrant. The applicant alleged that the execution of the warrant placed him at risk of an unfair trial in the United Kingdom. The Court declared the application inadmissible as being manifestly ill-founded, finding in particular that the facts did not disclose substantial grounds for believing that there would be a real risk that the applicant would be exposed to a "flagrant denial" of his Article 6 rights in the United Kingdom.

61. The Court came to a similar conclusion in *Pirozzi v. Belgium*, 2018. It held that the fact that the domestic courts had verified that execution of the European arrest warrant did not, in the circumstances of the case, render the protection of the rights guaranteed by the Convention manifestly deficient sufficed for it to find that the execution of the warrant had not been manifestly deficient such as to rebut the presumption of equivalent protection. For the same reasons, the Court found that the applicant's surrender to the Italian authorities could not be said to have been based on proceedings amounting to a flagrant denial of justice (§§ 67 and 71).

v. Article 8 of the Convention

62. The Court has also addressed the question whether the execution of a European arrest warrant might amount to disproportionate interference with the right to respect for family life (*E.B. v. the United Kingdom* (dec.), 2014; *West v. Hungary* (dec.), §§ 68-72).

63. The case of *E.B. v. the United Kingdom* (dec.), 2014, concerned a woman who was at risk of being surrendered to the Polish authorities under a European arrest warrant and thus being separated from her minor children. In her view, this was disproportionate given the minor nature of the offences for which she had been prosecuted in Poland. The Court declared the complaint inadmissible as being manifestly ill-founded, in view of the fact that the applicant's children had in any event been placed in foster care for reasons unconnected to the possible execution of the European arrest warrant. Hence, there was nothing to suggest that the applicant's surrender would amount to a violation of her right to respect for family life (§§ 31-32).

c. Custody of children and their unlawful removal by a parent[6]

64. In the case of *X v. Latvia* [GC], 2013, the Court referred to the relevant EU law regarding international child abduction, emphasising the international consensus in support of the child's best

[6] See also the Handbook on European law relating to the rights of the child, joint publication by the Court and the EU Agency for Fundamental Rights, which covers the Court's case-law as well as EU law and the case-law of the CJEU.

interests, despite the fact that EU law was not applicable in that case, which concerned the removal of a child from Australia – a non-member of the EU – to Latvia (§§ 41-42 and 97; see also, to similar effect, *Neulinger and Shuruk v. Switzerland* [GC], 2010, § 135).

65. The Court has also ruled in a variety of cases concerning the custody of children and the unlawful removal of children from one European Union member State to another, matters which are regulated by a specific EU legal instrument, namely Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (known as "the Brussels II *ter* Regulation")[7]. In these cases, the Court took account of the relevant EU law (see, for example, *Royer v. Hungary*, 2018, § 50).

66. Thus, the Court took account of the judgments which the CJEU had delivered in the same case in the context of a request for a preliminary ruling by the domestic courts (*Povse v. Austria* (dec.), 2013; *Rinau v. Lithuania*, 2020). In *Povse v. Austria* (dec.), 2013, a mother and her minor daughter complained of the decision of the Austrian courts to order, in conformity with EU law, the enforcement of the Italian court order for the return of the child to Italy. In reply to a request for a preliminary ruling by the Austrian Supreme Court, the CJEU had confirmed that the Austrian courts were to enforce the return order, which was accompanied by certificate of enforceability under Article 42(1) of the Brussels II *bis* Regulation, and that any question relating to the merits of the return decision had to be raised before the Italian courts. In the applicants' view, the fact that the Austrian courts had not examined their arguments against the child's return to Italy amounted to a violation of their right to respect for family life. The Court considered that the presumption of equivalent protection applied in the case at issue (§§ 77-83) and was not rebutted (§§ 84-87), in particular on the grounds that it could be seen from the judgment of the CJEU that it was still open to the applicants to seek review of the return order by the Italian courts, which were responsible for protecting the fundamental rights of the parties involved (§§ 84-87). As to the case of *Rinau v. Lithuania*, 2020, it concerned a father and his minor daughter who complained of a delay in executing the decision for the child's return to Germany and of the Lithuanian authorities' conduct in that context. In the course of the proceedings, the Lithuanian Supreme Court had requested a preliminary ruling from the CJEU. The Court noted that this request had caused a further delay, despite the fact that, as the CJEU had indicated, no doubt had been expressed as to the authenticity of the certificate issued by the German courts under the Brussels II *bis* Regulation and the arguments against the return had already been examined by the Lithuanian courts, which were therefore to order the child's return without delay. The Court ultimately found, as the CJEU had, that all the "procedural vagaries" had disregarded the fundamental aims not only of the Hague Convention and the Brussels II *bis* Regulation but also of Article 8 of the Convention (§ 219).

67. The Court has also ruled on a case which was the subject of infringement proceedings brought by Latvia against Italy before the European Commission as a result of insufficiently reasoned decisions by the Italian courts ordering a child's return to Italy in spite of the fact that the Latvian courts had refused to order that return on the grounds that it would not be in the child's best interests (*Šneersone and Kampanella v. Italy*, 2011).

68. Furthermore, the Court has taken into account the requirements of the Bruxelles II *bis* Regulation in its assessment of the authorities' swiftness in enforcing a final decision ordering a child's return to the State of origin in view of the passage of time, which can weaken the ties between the displaced child and the parent who has remained in that State (see, for example, *Shaw v. Hungary*, 2011, in which the Court took into consideration the fact that the Hungarian courts had

[7] Until 1 August 2022, Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (known as the "Brussels II *bis*" Regulation), was applicable.

not ruled within the six-week time-limit imposed by the Bruxelles II *bis* Regulation in finding that the Hungarian authorities had failed to comply with their positive obligation under Article 8 of the Convention; see also *Veres v. Spain*, 2022, in which it had taken two years for the applicant to obtain a final decision enforcing the Hungarian court's decision ordering a child's return to Hungary).

69. In addition, the Court has taken into account the CJEU's interpretation of the concept of "habitual residence" under the Bruxelles II *bis* Regulation (see, for example, *Michnea v. Romania*, 2020, concerning the Romanian courts' refusal to order the return of a child to Italy on the grounds that the child could not be considered to have her habitual residence in that State; see also *Giannakopoulos v. Greece*, 2024, in which the Greek courts had declared that they lacked jurisdiction under the Brussels II *bis* Regulation once they had found that the children had their habitual residence in Germany rather than Greece).

3. Legal professional privilege

70. The case of *Michaud v. France*, 2012, concerned the implementation of European Union directives on combating money laundering, and in particular the "obligation to report suspicions" imposed on lawyers. The applicant, a lawyer, argued that this obligation was contrary to Article 8 of the Convention as it was incompatible with the principles of lawyer-client privilege and professional confidentiality. The Court reiterated that execution of the State's legal obligations resulting from its membership of the European Union was a legitimate general-interest objective (§ 100). Nevertheless, the presumption of equivalent protection did not apply in the case at issue (§§ 112-116; see Chapter I.C. above). The Court therefore examined whether the interference had been necessary, before finding that the obligation to report suspicions did not constitute disproportionate interference with the professional privilege of lawyers and that there had thus been no violation of Article 8 of the Convention (§§ 117-132).

4. Prohibition of certain commercial activities

71. The case of *O'Sullivan McCarthy Mussel Development Ltd v. Ireland*, 2018, concerned a temporary prohibition on mussel seed fishing imposed by the Irish authorities in order to comply with a European Union directive and a CJEU judgment given in infringement proceedings. The applicant company complained of a breach of its right to earn a livelihood as it had received no compensation for the financial losses sustained as a result of the prohibition. As the presumption of equivalent protection did not apply in view of the margin of manoeuvre that had been available to the national authorities (§ 112), the Court examined whether the interference by those authorities with the applicant company's right to the peaceful enjoyment of its possessions had been justified. In finding that there had been no violation of Article 1 of Protocol No. 1, the Court took into account, among other considerations, the fact that the applicant company should have been aware of a possible risk of interruption, or at least some disruption, of its usual commercial activities, at least from the date of the CJEU judgment, and arguably from the bringing of the infringement proceedings by the European Commission (§ 117). The extent and consequences of any infringement judgment could not be foreseen, but the risk of some interruption could clearly not be excluded (*ibid.*). The Court further considered in the case at issue that the fact that the respondent State was found not to have fulfilled its obligations under EU law should not be regarded, for the purposes of Article 1 of Protocol No. 1, as diminishing the importance of the aims of the impugned interference, or as lessening the weight to be attributed to them (§ 125). Moreover, the repercussions of the CJEU judgment had not been limited to the applicant company; the situation was national in dimension and needed to be addressed at that level. Achieving compliance on this wide scale, and within an acceptable timeframe, with the respondent State's obligations under EU environmental law was therefore a matter of general interest of the community, attracting a wide margin of appreciation for the domestic authorities (§ 128).

5. Impounding of movable property

72. The Court was called upon to assess the compatibility with the right to the peaceful enjoyment of possessions (Article 1 of Protocol No. 1) of the impounding by the Irish authorities of an item of movable property in accordance with the economic sanctions provided for by a European Union regulation, which in turn had been adopted in order to implement a United Nations Security Council resolution (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, §§ 72-98, 105 and 143-166). In that case the Court considered that the presumption of equivalent protection applied and that the protection of the rights guaranteed by the Convention had not been manifestly deficient in the circumstances of the case (see, regarding the presumption of equivalent protection, Chapter I.C. above). It therefore held that there had been no violation of the Convention (§ 166).

II. Interaction between proceedings before the CJEU and the Convention

A. Admissibility issues

Article 35 of the Convention

> "1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of four months from the date on which the final decision was taken.
>
> 2. The Court shall not deal with any application submitted under Article 34 that
>
> ...
>
> (b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
>
> 3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> (a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or
>
> ...
>
> 4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings."

1. Proceedings before the CJEU and exhaustion of domestic remedies

73. The Admissibility Guide sets out the principles concerning the exhaustion of domestic remedies as required by Article 35 § 1 of the Convention.

74. Article 35 § 1 of the Convention concerns only domestic remedies; it does not require the exhaustion of remedies within the framework of international organisations. On the contrary, if the applicant has already submitted the case to another procedure of international investigation or settlement, the application may be rejected under Article 35 § 2 (b) of the Convention (in this connection, see paragraphs 76 et seq. below). However, the principle of subsidiarity may entail a requirement to exhaust domestic remedies in the context of which a preliminary ruling by the CJEU is requested (*Laurus Invest Hungary KFT and Others v. Hungary* (dec.), 2015, § 42, where a

preliminary ruling by the CJEU provided the domestic courts with guidance as to the criteria to be applied in a pending case concerning an alleged breach of Article 1 of Protocol No. 1).

75. Furthermore, applicants are required to exhaust domestic remedies even where the CJEU has found against the respondent State following an infringement procedure (*De Ciantis v. Italy* (dec.), 2014, §§ 30-33). In that case, the finding of an infringement by the CJEU had not been intended, nor had it served, to resolve an individual situation, and therefore had no impact on the applicant's rights (*ibid.*).

2. Pending or closed cases before the CJEU

76. Under Article 35 § 2 (b) of the Convention, the Court may not deal with any application that is substantially the same as a matter already submitted to another procedure of international investigation or settlement. The Admissibility Guide sets out in detail the case-law concerning this admissibility criterion.

77. In *Cannavacciuolo and Others v. Italy*, 2025, the Government argued that the Court was prevented from examining the merits of the case because the CJEU had already delivered two judgments addressing several issues raised by the applicants. These judgments were issued in infringement proceedings initiated by the European Commission against the respondent State, in which the CJEU had found that the respondent State had failed to fulfil its obligations under EU law. The Court reiterated that any finding of infringement by the CJEU did not resolve individual cases or lead to awards of individual reparation, even when the proceedings had been initiated by individual complainants. The Court considered that the procedure before the CJEU was not similar, either in its procedural aspects or potential effects, to the right of individual application provided for in Article 34 of the Convention. Therefore, it did not constitute a "procedure of international investigation or settlement" within the meaning of Article 35 § 2 (b) of the Convention (§§ 195-203). Hence, the Court has also found that a judgment of the CJEU finding an infringement did not exempt an applicant from exhausting domestic remedies, as the judgment in question had had no impact on the applicant's rights since it had not been intended, nor had it served, to resolve an individual situation (*De Ciantis v. Italy* (dec.), 2014, §§ 30-33).

78. In *Karoussiotis v. Portugal*, 2011, the Court had to determine whether the European Commission, to which the applicant had submitted an application in respect of the same facts and complaints, constituted another procedure of international investigation or settlement. The Court answered this question in the negative, finding that the procedure before the European Commission was not similar, in either its procedural aspects or its potential effects, to the individual application provided for in Article 34 of the Convention. Firstly, the European Commission had had discretion to decide whether or not infringement proceedings should be opened and then whether or not to refer the case to the CJEU in accordance with Article 258 of the Treaty on the Functioning of the European Union (TFEU); and secondly, the CJEU could not award individual reparation to complainants in infringement proceedings (§§ 59-76; see also *Shaw v. Hungary*, 2011, § 51).

3. Claims for compensation for a breach of EU law

79. The Court has not ruled out that a domestic claim for compensation for a breach of EU law could be a remedy to be exhausted for the purposes of Article 35 § 1 of the Convention. For instance, in *Laurus Invest Hungary KFT and Others v. Hungary* (dec.), 2015, some of the applicant companies had brought an action for damages against the State, claiming compensation for the loss of business sustained on account of the impugned legislation, which was allegedly in breach of EU law. That action was still pending before the domestic courts after a referral to the CJEU for a preliminary ruling in which the CJEU had provided the domestic courts with guidance as to the criteria to be applied to resolve the case. Given that the assessment required by the CJEU explicitly relied, at least partly, on the Strasbourg case-law, the Court considered that to substitute its own assessment for

that of the national courts as guided by the CJEU, without awaiting the outcome of the proceedings, would be tantamount to ignoring its subsidiary role. It therefore declared the applications inadmissible for non-exhaustion of domestic remedies.

80. By contrast, in *Könyv-Tár Kft and Others v. Hungary*, 2018, §§ 27-28, the Court was not persuaded that, in the circumstances, an action for damages for a breach of EU law would have been a remedy capable of providing redress for the applicant companies' complaints, in view of a recent judgment delivered by the Hungarian Supreme Court. It therefore dismissed the Government's non-exhaustion objection (see also *Aleksieva and Others v. Bulgaria**, 2026, § 260, in which the Court dismissed the non-exhaustion objection since the Government had not argued that the domestic authorities had been "implementing EU law" when they took the impugned actions, while this was one of the criteria to engage a State's liability for damage caused by a breach of EU law).

B. The obligation to give reasons for refusing to request a preliminary ruling from the CJEU[8]

Article 6 § 1 of the Convention

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by [a] tribunal ..."

81. Under Article 267 of the TFEU, where a question relating in particular to the interpretation of the Treaty or of acts of the European Union institutions is raised in proceedings before a court or tribunal of a member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the CJEU to give a ruling thereon. Where any such question is raised in a case pending before a court or tribunal of a member State against whose decisions there is no judicial remedy under national law, that court or tribunal is required to bring the matter before the CJEU, except in certain cases defined by the CJEU according to the so-called *Cilfit* criteria[9].

82. The Convention does not guarantee, as such, any right to have a case referred by a domestic court to the CJEU for a preliminary ruling. However, the Court does not rule out the possibility that refusal by a domestic court to grant a request for such a referral may, in certain circumstances, infringe the fairness of proceedings, in particular where such refusal appears arbitrary (*Ullens de Schooten and Rezabek v. Belgium*, 2011, §§ 57).

83. Article 6 § 1 thus imposes an obligation on domestic courts to give reasons, in the light of the applicable law, for any decisions in which they refuse to refer a preliminary question, especially where the applicable law allows for such a refusal only on an exceptional basis (*Ullens de Schooten and Rezabek v. Belgium*, 2011, §§ 57 and 60; *Vergauwen and Others v. Belgium* (dec.), 2012; *Sanofi Pasteur v. France*, 2020, § 69). The obligation for domestic courts to provide reasons for their judgments and decisions serves to enable the parties to understand the judicial decision that has been given, which is a vital safeguard against arbitrariness. In addition, it serves the purpose of demonstrating to the parties that they have been heard, thereby contributing to a more willing

[8] As regards the general principles concerning the requirement to give reasons in civil matters, see the Guide on Article 6 of the Convention (civil limb); for further information on this topic, see the dedicated Key Theme on the obligation to give reasons for a refusal to make a preliminary reference to the Court of Justice of the European Union.

[9] Judgment of the Court of Justice of 6 October 1982 in *CILFIT and Others*, 283/81, EU:C:1982:335; see also the judgment of the Grand Chamber of the CJEU of 6 October 2021 in *Consorzio Italian Management e Catania Multiservizi*, C-561/19, EU:C:2021:799. and that of 24 March 2026, in *Remling*, C-767/23, EU:C:2026:243.

acceptance of the decision on their part (*Harisch v. Germany*, 2019, § 33, and *Gondert v. Germany*, 2025, §§ 36 and 42).

84. The Court has concluded from this that when it hears a complaint alleging a violation of Article 6 § 1 on this basis, its task consists in ensuring that the impugned refusal has been duly accompanied by such reasoning. However, it has emphasised that, while this verification has to be made thoroughly, it is not for the Court to examine any errors that might have been committed by the domestic courts in interpreting or applying the relevant law (*Sanofi Pasteur v. France*, 2020, § 69; *Repcevirág Szövetkezet v. Hungary*, 2019, § 59).

85. It falls to the applicant to request a referral to the CJEU and to give reasons for it (*De Simone v. Germany* (dec.), 2025, §§ 33-34, and *Gondert v. Germany*, 2025, § 42; see also *John v. Germany* (dec.), 2007; *Somorjai v. Hungary*, 2018, § 60; *Bley v. Germany* (dec.), 2019). In the absence of such a request and explicit reasons the Court considers that the fact that a court, without providing reasons, did not refer a question to the CJEU for a preliminary ruling cannot be regarded as infringing the fairness of the proceedings pursuant to Article 6 of the Convention (*Gondert v. Germany*, 2025, § 42). Nor is it sufficient for an applicant to have broadly challenged the alignment of the domestic provisions with EU law or the interpretation of EU law by the domestic courts (*De Simone v. Germany* (dec.), 2025, § 33).

86. The obligation under Article 267(3) of the TFEU to request a preliminary ruling from the CJEU is not absolute. However, where national courts against whose decisions there is no remedy under national law refuse to refer to the CJEU a preliminary question on the interpretation of EU law that has been raised before them, they are obliged to give reasons for their refusal in the light of the exceptions provided for in the case-law of the CJEU in accordance with the *Cilfit* criteria. They must therefore indicate the reasons why they have found that the question is irrelevant, that the EU provision in question has already been interpreted by the CJEU or that the correct application of EU law is so obvious as to leave no scope for any reasonable doubt (*Ullens de Schooten and Rezabek v. Belgium*, 2011, § 56; *Sanofi Pasteur v. France*, 2020, § 68).

87. The reasons given in the decision by the court of final instance refusing to refer a case to the CJEU for a preliminary ruling are to be assessed in the light of the circumstances of the case and the domestic proceedings as a whole (*Harisch v. Germany*, 2019, § 42). Such refusal, in the context of a complaint against the refusal to grant leave to appeal, while not necessarily needing to be more detailed, must at least indicate the *CILFIT* criteria on which it was based (*Gondert v. Germany*, 2025, § 44).

88. There arises no obligation to give reasons for a non-referral either where the domestic court declares the application in the context of which the referral was requested inadmissible for failing to comply with (procedural) conditions of admissibility as the replies to the questions envisaged, whatever they might be, would have no impact on the outcome of the case (*Astikos Kai Paratheristikos Oikodomikos Synetairismos Axiomatikon and Karagiorgos v. Greece* (dec.), 2017, § 47; *Gondert v. Germany*, 2025, §§ 39 and 43). It has also been accepted that the reasons for the rejection of the request for a preliminary ruling under the *Cilfit* criteria could be inferred from the reasoning of the judgment of the court concerned (*Sanofi Pasteur v. France*, 2020, § 71; *Krikorian v. France* (dec.), 2013, §§ 97-99); from a reference by that court to one of its earlier decisions (*Gondert v. Germany*, 2025, § 38); or from its endorsement of the reasons given in the decisions of lower courts, if the latter have considered the *Cilfit* criteria (*Gondert v. Germany*, 2025, § 38).

89. By contrast, the Court has found a violation of Article 6 § 1 of the Convention where the highest court made no reference to the applicant's request for a preliminary ruling or to the reasons why it considered that the question raised did not warrant referral to the CJEU (*Dhahbi v. Italy*, 2014, §§ 32-34; *Schipani and Others v. Italy*, 2015, §§ 71-72; *Rutar and Rutar Marketing D.O.O. v. Slovenia*, 2022, § 63), or where the highest court's judgment contained a reference to the applicant company's requests for a preliminary ruling through the phrase "without it being necessary to refer

a question to the Court of Justice of the European Union for a preliminary ruling", and it was not possible to establish whether these issues had been examined in the light of the *Cilfit* criteria (*Sanofi Pasteur v. France*, 2020, § 78; *Bio Farmland Betriebs S.R.L. v. Romania*, 2021, § 55).

C. Assessment of the reasonableness of the length of the domestic proceedings following referral to the CJEU for a preliminary ruling

Article 6 § 1 of the Convention

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by [a] tribunal established by law..."

90. The Guide on Article 6 of the Convention (civil limb) sets out the principles concerning the Court's assessment of the reasonableness of the length of domestic proceedings.

91. As regards the period to be taken into consideration when calculating the length of the proceedings, no account is taken of proceedings for a preliminary ruling by the CJEU in the assessment of the length of time attributable to the domestic authorities (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 208; *Pafitis and Others v. Greece*, 1998, § 95; *Koua Poirrez v. France*, 2003, § 61). That period is deducted from the overall length of the domestic proceedings.

92. Furthermore, in examining the reasonableness of the length of proceedings, the need to seek a ruling from the CJEU on questions relating to the interpretation of European Union law, or the fact that the case was referred to the Grand Chamber of the CJEU, may point to a degree of legal complexity (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 212). Interactions between the national authorities and the European Commission concerning questions relating to the application and interpretation of EU law raised by the case, where no CJEU rulings exist on the subject, may also indicate that the case is complex (*Veriter v. France*, 2010, § 67).

D. Refusal by the CJEU to allow the parties to respond to the opinion of the Advocate General

Article 6 § 1 of the Convention

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by [a] tribunal established by law..."

93. The Rules of Procedure of the Court of Justice of the EU provide that the President of the CJEU in principle declares the oral part of the procedure closed after the Advocate General has delivered his or her opinion. However, the Court of Justice may at any time order the reopening of the oral part of the procedure, in particular where one of the parties has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the CJEU, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons.

94. In the case of *Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands* (dec.), 2009, the Court applied the presumption of equivalent protection to preliminary ruling proceedings before the CJEU (see Chapter I.C. above concerning the presumption of equivalent protection). In that case, the applicant association argued that the refusal by the CJEU to allow it to respond to the opinion of the Advocate General of the CJEU amounted to a breach of its right to a fair hearing as guaranteed by Article 6 § 1 of the Convention, and in particular the right to adversarial proceedings. The Court examined the issue whether the procedure before the CJEU had been accompanied by guarantees which ensured protection of the applicant association's rights equivalent to the protection afforded by the Convention.

The Court concluded that the applicant association had not demonstrated that its inability to respond to the Advocate General's opinion had rendered the protection afforded to it "manifestly deficient". It had therefore failed to rebut the presumption that the procedure before the CJEU had provided protection of its rights equivalent to that afforded by the Convention. The Court noted, firstly, that the CJEU had examined on the merits the request for reopening of the procedure and had found that the applicant association had not provided any precise information indicating that it would be either useful or necessary to reopen the procedure. Secondly, the requesting court could have submitted a further request for a preliminary ruling to the CJEU had it found itself unable to give a decision in the case based on the first such ruling.

E. Recognition of the importance of judicial dialogue between the CJEU and the national courts

95. The Court has, on several occasions, dealt with cases which had been referred to the CJEU for a preliminary ruling in the domestic proceedings (see, for example, *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017; *Jehovah's Witnesses v. Finland*, 2023; *Executief van de Moslims van België and Others v. Belgium*, 2024; *Italmoda Mariano Previti and Others v. the Netherlands* (dec.), 2025; *Europa Way S.r.l. v. Italy*, 2025), and with cases concerning legal issues similar to those already examined by the CJEU in distinct cases (see, for example, *Willems v. the Netherlands* (dec.), 2021; *Ferrero Quintana v. Spain*, 2024). In these cases, the Court emphasised the importance, for the protection of fundamental rights in the EU, of the judicial dialogue between the domestic courts of EU member States and the CJEU in the form of preliminary references (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 150; *Jehovah's Witnesses v. Finland*, 2023, §§ 85-87; *Executief van de Moslims van België and Others v. Belgium*, 2024, § 112; *Ferrero Quintana v. Spain*, 2024, § 78).

96. In that regard, the Court took the view, in the case of *Tuleya v. Poland*, 2023, that the institution of disciplinary proceedings against an judge for having made a reference to the CJEU for a preliminary ruling ran counter to Article 8 of the Convention. That case concerned the lifting of a judge's immunity from prosecution and his suspension from his official duties by the Disciplinary Chamber of the Polish Supreme Court. Disciplinary officers had initiated a series of preliminary inquiries in respect of the applicant. One of those inquiries concerned his request to the CJEU for a preliminary ruling on the compatibility of the new Polish disciplinary regime with EU law. That inquiry had been interrupted and no charges had been laid against him. The Court found that it was immaterial that the disciplinary officer had terminated the preliminary inquiry and had brought no disciplinary charge against the applicant. It considered that the imposition or the threat of imposition of disciplinary liability in connection with the giving of a judicial decision had to be seen as an exceptional measure and be subject to restrictive interpretation, having regard to the principle of judicial independence. The Court referred to several judgments of the CJEU in finding that interference in the form of a preliminary inquiry into the reference for a preliminary ruling was contrary to Article 267 of the TFEU. Accordingly, the Court concluded that the interference with the

applicant's right to respect for private life had not been "in accordance with the law" within the meaning of Article 8 of the Convention (§§ 434-438).

III. References to European Union law in the Court's case-law

A. General considerations

97. Despite its specific character as a human rights instrument, the Convention is an international treaty to be interpreted in accordance with the relevant norms and principles of public international law and, in particular, in the light of the Vienna Convention on the Law of Treaties of 23 May 1969. Pursuant to the Vienna Convention, the Court must establish the ordinary meaning to be given to the terms in their context and in the light of the object and purpose of the provision from which they are taken. It must have regard to the fact that the context of the provision is a treaty for the effective protection of individual human rights and that the Convention must be read as a whole and interpreted in such a way as to promote internal consistency and harmony between its various provisions. Thus, the Court has never considered the provisions of the Convention to be the sole framework of reference for the interpretation of the rights and freedoms enshrined therein. On the contrary, it must also take into account any relevant rules and principles of international law applicable in relations between the Contracting Parties (*N.D. and N.T. v. Spain* [GC], 2020, § 172).

98. Thus, as with other international law instruments, the Court includes in its judgments and decisions the relevant extracts from the instruments of European Union law and the case-law of the CJEU even where they are not decisive, and also when the case in question has been brought against a non-EU member State (as regards this last aspect see, among other cases, *Perinçek v. Switzerland* [GC], 2015, §§ 255-257 and 266, on the existence or lack of a consensus concerning the punishment of genocide denial; *Kurban v. Turkey*, 2020, §§ 37-39 and 81, concerning the assessment of candidates for public procurement; *Guðmundur Andri Ástráðsson v. Iceland* [GC], 2020, §§ 130-139, concerning the concept of a "tribunal established by law" and the characteristics of independence and impartiality).

Examples of references to EU law in the part of the Court's judgment concerning the applicable law include:

- the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) (*N.D. and N.T. v. Spain* [GC], 2020, §§ 41-43);
- the Charter of Fundamental Rights of the European Union (*Centrum för rättvisa v. Sweden* [GC], 2021, § 92; *Big Brother Watch and Others v. the United Kingdom* [GC], 2021, § 202);
- an association agreement between the EU and a third country (*Saadi v. Italy* [GC], 2008, § 62);
- regulations (*X v. Latvia* [GC], 2013, § 42; *N.D. and N.T. v. Spain* [GC], 2020, §§ 45-46; *Pönkä v. Estonia*, 2016, § 21);
- directives (*Ilias and Ahmed v. Hungary* [GC], 2019, §§ 47-58; *Centrum för rättvisa v. Sweden* [GC], 2021, §§ 93-97; *Jurčić v. Croatia*, 2021, §§ 33-34);
- framework decisions (*Perinçek v. Switzerland [GC]*, 2015, §§ 82-86; *G.I.E.M. S.R.L. and Others v. Italy* [GC], 2018, §§ 147-148);
- international agreements between the European Union and third countries (*Ilias and Ahmed v. Hungary* [GC], 2019, § 59);

- the case-law of the courts of the European Union (*F.G. v. Sweden* [GC], 2016, § 51; *Mihalache v. Romania* [GC], 2019, §§ 42-43; *Jurčić v. Croatia*, 2021, §§ 35-41; *Jehovah's Witnesses v. Finland*, 2023, §§ 85-87);
- European Parliament resolutions (*N.D. and N.T. v. Spain* [GC], 2020, § 52; *Vavřička and Others v. the Czech Republic* [GC], 2021, § 149);
- recommendations and conclusions of the Council of the European Union (*Vavřička and Others v. the Czech Republic* [GC], 2021, §§ 148 and 150) or the European Commission (*Ilias and Ahmed v. Hungary* [GC], 2019, § 60);
- guidelines and surveys published by the EU (*Kurt v. Austria* [GC], 2021, §§ 95-98).

99. The Court has also held repeatedly that the Convention is to be interpreted in the light of relevant European Union law and in particular of member States' obligations (*Aristimuño Mendizabal v. France*, 2006, § 69, and the case-law cited therein), taking the view that EU law provides useful guidance (*Vilho Eskelinen and Others v. Finland* [GC], 2007, § 60).

100. At times, the Court also refers to European Union law in order to establish the existence of a consensus at European and/or international level. Examples include:

- the existence or lack of consensus regarding the punishment of genocide denial (*Perinçek v. Switzerland [GC]*, 2015, §§ 255-257 and 266);
- the existence of consensus regarding the length of waiting periods for family reunification for persons under subsidiary protection (*M.A. v. Denmark* [GC], 2021, §§ 155-159);
- the absence of a general prohibition on the prosecution of victims of trafficking (*V.C.L. and A.N. v. the United Kingdom*, 2021, § 158);
- the existence of consensus as to the importance of press archives (*Hurbain v. Belgium* [GC], 2023, § 183).

101. The remainder of this chapter is not intended to set out exhaustively all the cases in which the Court has referred to European Union law. Rather, it is aimed at illustrating the mechanism involved through examples that relate directly to issues that also arise in EU law, and through judgments and decisions in which EU law featured in the Court's reasoning.

B. Asylum and immigration

102. The Guide on immigration sets out the principles with regard to all the issues that may arise under the Convention concerning asylum and immigration[10].

103. European Union law contains several instruments regulating asylum and immigration issues, in particular the EU Pact on Migration and Asylum. The implementation and application of these instruments by the national authorities have resulted in many cases before the Court.

104. *Article 5 § 1 of the Convention*: in assessing whether the decision to detain an asylum-seeker had been taken "in accordance with a procedure prescribed by law", the Court held that the national rules to which that expression referred could stem from European Union law (*Thimothawes v. Belgium*, 2017, § 70; *Muzamba Oyaw v. Belgium* (dec.), 2017, § 35). It is for the national authorities to interpret and apply EU law. The Court's task is limited to examining whether the interpretation of the legal provisions relied on by the domestic authorities in a given case was not so arbitrary or manifestly unreasonable as to render the applicant's detention unlawful (*Muzamba Oyaw v. Belgium* (dec.), 2017, § 37).

[10] See also the Handbook on European law relating to asylum, borders and immigration, joint publication of the Court and the EU Agency for Fundamental Rights, 2020, which covers the Court's case-law as well as EU law and the case-law of the CJEU.

105. The Court has also determined various cases connected with EU law, or in which it referred to EU law, including on the following issues:

- the lack of a jurisdictional link with the respondent State under Article 1 of the Convention in relation to individuals who had applied for a visa from an embassy of that State in a country that was not a Party to the Convention (*M.N. and Others v. Belgium* (dec.) [GC], 2020, §§ 61-73, 93 and 124);
- the risk of treatment contrary to Article 3 of the Convention in the event of removal to a third country (for instance, *Sufi and Elmi v. the United Kingdom*, 2011, §§ 30-34 and 225-226, concerning a situation of generalised violence in the receiving country; *J.K. and Others v. Sweden* [GC], 2016, §§ 47-51, 96-98, 100 and 119, concerning, among other matters, the possibility of internal relocation; *M.M.R. v. the Netherlands* (dec.), 2016, § 31, concerning a risk of sexual violence; *Khasanov and Rakhmanov v. Russia* [GC], 2022, §§ 58, 122 and 125-126, concerning applicants belonging to an ethnic minority in the receiving country; *D.M. v. Sweden*, 2026, §§ 66-74, 161, 177 and 183, concerning deportation of an Afghan national of Hazara ethnicity);
- the inhuman and degrading nature of the administrative detention of foreign minors, to be assessed with reference to three factors: the age of the children, whether or not the premises were suited to their specific needs, and the length of their detention (*Popov v. France*, 2012, §§ 59-63 and 141; *R.M. and Others v. France*, 2016, § 71; *Moustahi v. France*, 2020, §§ 29 and 132; *M.D. and A.D. v. France*, 2021, §§ 48-50 and 64);
- the degrading nature of the treatment of asylum-seekers living on the streets for several months without any means of subsistence because of administrative delays preventing them from having access to the reception conditions provided for by law (*M.S.S. v. Belgium and Greece* [GC], 2011, §§ 250-251; *N.H. and Others v. France*, 2020, §§ 92-100 and §§ 161-162);
- the criminalisation of homosexual acts in the country of origin, which did not prevent *per se* the deportation of a homosexual person to that country for the purposes of Article 3 of the Convention (*B and C v. Switzerland*, 2020, §§ 35 and 59);
- the relationship between Convention law, EU law and the 1951 Geneva Convention relating to the status of refugees, with regard to the distinction between refugee status and the fact of being a refugee (*K.I. v. France*, 2021, §§ 71-79, 122-123, 130, and 142; *R v. France*, 2022, §§ 111-112);
- the violation of Articles 3 and 13 of the Convention on account of the authorities' refusal to register the applicants' asylum application and their removal to Belarus, from where they risked being returned to Russia (*M.A. and Others v. Lithuania*, 2018, §§ 56-60 and 70);
- the effectiveness of the examination of a Syrian national's asylum claim in the context of his potential return from Greece to Türkiye under the EU-Türkiye Statement of 18 March 2016 (*J.B. v. Greece*, 2026, §§ 47-54, 117);
- the characterisation as a *de facto* "deprivation of liberty", for the purposes of Article 5 § 1 of the Convention, of a stay in a transit zone located on the land border between an EU member State and a third country, where asylum-seekers had to stay pending the examination of the admissibility of their asylum requests (*Ilias and Ahmed v. Hungary* [GC], 2019, §§ 47-60, 132-134, 141, 143, 152-153 and 237; see also, conversely, *R.R. and Others v. Hungary*, 2021, §§ 26-28, 49 and 58);
- the lawfulness under Article 5 § 1 of the Convention of the detention of a Russian national with a view to his extradition to his country of origin although he had been granted refugee status in another European Union member State (*Shiksaitov v. Slovakia*, 2020, §§ 41, 71 and 81);

- the refusal to issue a residence permit for over 14 years to a European Union national who had been lawfully resident in a member State other than that of which she was a national (*Aristimuño Mendizabal v. France*, 2006, §§ 29-35, 67-69 and 74-79);
- questions related to family reunification requests (*M.A. v. Denmark* [GC], 2021, §§ 42-62, §§ 153-160, concerning the lack of a European consensus and the compatibility with Article 8 (family life) of the introduction of a waiting period for family reunification for beneficiaries of subsidiary protection; *Dabo v. Sweden*, 2024, §§ 50-60, 102, 104, concerning the refusal to grant a request for family reunification on the grounds that the sponsor did not have sufficient resources to provide for himself and the members of his family; *Suji v. Greece*, 2026, *T.N. v. Greece*, 2026, and *Dotani v. Greece*, 2026, concerning the prolonged failure by national authorities to take a decision on applications for family reunification lodged by persons who had been granted refugee status in Greece, on account of their inability to produce supporting documents required by national legislation);
- the positive obligations arising out of Article 8 of the Convention (private life) with regard to an unaccompanied minor asylum-seeker who was placed in a reception centre for adults and was not afforded minimum procedural guarantees in the age-assessment procedure (*Darboe and Camara v. Italy*, 2022, §§ 75-94, 126, 133-141, 143, 155);
- the removal of asylum-seekers at the external borders of the European Union without individual examination of their claims or preventing them from lodging an asylum claim, potentially amounting to collective expulsion prohibited by Article 4 of Protocol No. 4 (*Hirsi Jamaa and Others v. Italy* [GC], 2012, §§ 28-32 and 135; *N.D. and N.T. v. Spain* [GC], 2020, §§ 41-52, 177 and 182-184; *M.K. and Others v. Poland*, 2020, §§ 78-91 and 180-182; *D.A. and Others v. Poland*, 2021, §§ 65-67; *Shahzad v. Hungary*, 2021, §§ 21-26 and 49; *M.H. and Others v. Croatia*, 2021, §§ 85-88, 136, 184, 197, 200, 254 and 327; *S.S. and Others v. Hungary*, 2023, §§ 23-28, 51; *H.Q. and Others v. Hungary*, 2025, §§ 57-73, 121);
- the procedural safeguards to be observed under Article 1 of Protocol No. 7 in relation to the expulsion of aliens, especially with regard to the right to be informed of the reasons for expulsion and to have access to the documents in the file (*Muhammad and Muhammad v. Romania* [GC], 2020, §§ 71-73 and 148);
- the lawfulness under Article 5 § 1 of the Convention of the detention of migrants in the Lampedusa hotspot and the lawfulness under Article 4 of Protocol No. 4 of the Convention of the refusal-of-entry and removal orders issued by the national authorities (*J.A. and Others v. Italy*, 2023, §§ 28-37);
- the lawfulness and conditions mainly under Article 5 of a Tunisian national's confinement on board an Italian cruise ship responsible for returning him following a refusal-of-entry order issued by Italian authorities (*Mansouri v. Italy* (dec.) [GC], 2025, §§ 33-39, 115).

C. Fair trial and effective remedy[11]

Article 6

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

1. Scope of application of Article 6 of the Convention

106. The Court referred to the scope of application of Article 47 of the Charter of Fundamental Rights of the European Union (right to an effective remedy and to a fair trial) and to the relevant CJEU case-law in exploring the possibility of developing its own case-law and extending, in principle, the scope of application of Article 6 § 1 of the Convention to disputes involving civil servants (*Vilho Eskelinen and Others v. Finland* [GC], 2007, §§ 29-30 and 60) and to interim measures (*Micallef v. Malta* [GC], 2009, § 32, 78).

107. In *Posti and Rahko v. Finland*, 2002, the Court specified that its position on the applicability of Article 6 of the Convention regarding access to a court in order to challenge fishing restrictions imposed by a ministerial decree was similar to that adopted in EU law (§ 54).

108. The Court has also reaffirmed, in cases concerning European Union law, that Article 6 of the Convention is not applicable to the determination of a tax (*Emesa Sugar N.V. v. the Netherlands* (dec.), 2005, concerning summary injunction proceedings relating to customs duties and charges; *Ioviţoni and Others v. Romania* (dec.), 2012, § 55, concerning the imposition of a pollution tax; see also *Italmoda Mariano Previti and Others v. the Netherlands* (dec.), 2025, §§ 31-34,

[11] For the applicable general principles see the Guide on Article 6 (civil limb), the Guide on Article 6 (criminal limb) and the Guide on Article 13.

§§ 52-61, § 89, § 91, regarding the inapplicability of Article 7 of the Convention to a supplementary tax assessment that had been issued in the wake of transactions involved in value-added tax (VAT) fraud committed in the context of intra-Community deliveries).

2. Right of access to a court[12]

109. In the case of *Société Guérin Automobiles v. the 15 States of the European Union* (dec.), 2000, the applicant company complained that the letters it had received from the European Commission concerning a complaint which it had lodged did not contain any details concerning remedies, time-limits, the calculation of time-limits or the courts in which proceedings could be brought, with the result that the actions brought by the applicant company in the courts of the European Union had been declared inadmissible as being out of time. The Court considered it unnecessary to rule on the compatibility *ratione personae* of the application with the Convention, since it was in any event incompatible *ratione materiae*. The Court found that Articles 6 and 13 of the Convention did not cover the right to be informed of the remedies available and the time-limits for bringing proceedings through information to that effect in acts that were open to challenge.

110. The Court also referred to European Union law in the following cases raising issues with regard to the right of access to a court:

- *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], 2016, §§ 59-65, § 148 and §§ 152-153: access to a court in order to challenge the confiscation of the applicants' assets under the regime of economic sanctions adopted by the United Nations;
- *Arlewin v. Sweden*, 2016, §§ 35-39 and 61-63: jurisdiction of the respondent State to examine a defamation claim in the light of Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "Brussels I Regulation");
- *Heracles S.A. General Cement Company v. Greece* (dec.), 2016, §§ 35-41, §§ 67-70: requirement for the applicant company to repay part of the State aid which the European Commission found to be incompatible with EU law;
- *Naït-Liman v. Switzerland* [GC], 2018, §§ 91-93 and 207: lack of universal jurisdiction of the civil courts in respect of acts of torture;
- *Konkurrenten.no AS v. Norway* (dec.), 2019, §§ 43 and 45: responsibility of the State for the alleged denial of access to a court by the Court of Justice of the European Free Trade Association States;
- *Grzęda v. Poland* [GC], 2022, §§ 145-167, 277, 307, 318, 322-323 and 348: lack of judicial review of the premature termination, after legislative reform, of a serving judge's mandate as a member of the National Council of the Judiciary.

3. Fairness of proceedings

111. The Court has made numerous references to European Union law in cases concerning the fairness of proceedings. Below are some examples of cases in which the Court referred to or found support in EU law:

- proceedings brought by the applicants, who held securities issued by a banking and insurance conglomerate, challenging the lawfulness of the expropriation of those assets by the respondent State in the context of measures to tackle the 2008 financial crisis (*Adorisio and Others v. the Netherlands* (dec.), 2015, §§ 38-44);

[12] See also the Handbook on European law relating to access to justice, joint publication of the Court and the EU Agency for Fundamental Rights, 2016, which covers the Court's case-law as well as EU law and the case-law of the CJEU.

- the European procedure for the adjudication of small claims, in a case concerning the domestic courts' refusal to hold a public hearing in a civil case (*Pönkä v. Estonia*, 2016, §§ 21, 30 and 37);
- competition proceedings alleged to be unfair on account of the use of hearsay evidence (*SA-Capital Oy v. Finland*, 2019, §§ 86 and 93);
- use of the criterion of the economic continuity of the company in a case concerning a civil judgment against the applicant company for anti-competitive practices attributable to the company of which it was the successor (*Carrefour France v. France* (dec.), 2019, §§ 23-25 and 50);
- the appointment of judges and the independence of the judiciary, where the concept of a "tribunal established by law" was in issue (*Guðmundur Andri Ástráðsson v. Iceland* [GC], 2020, §§ 130-139 and 239, in a criminal context; *Xhoxhaj v. Albania*, 2021, §§ 222-229, 298 and 313; *Xero Flor w Polsce sp. z o.o. v. Poland*, 2021, §§ 134-151, 231 and 284; *Reczkowicz v. Poland*, 2021, §§ 149-174, 245-246, 250-256, 264 and 268; *Dolińska - Ficek and Ozimek v. Poland*, 2021, §§ 178-208, 283-284, 301-307, 320, 324-328, 335 and 342; *Advance Pharma sp. z o.o v. Poland*, 2022, §§ 192-222, 306-307, 314-317, 326-331 and 338, in a civil context); *Juszczyszyn v. Poland*, 2022, §§ 117-129, 195, 203, 328-331, 335; *Wałęsa v. Poland*, 2023, §§ 79, 83, 87, 89-90, 95-99, 122-129, 180);
- the European Commission's reports on tackling corruption and on the cooperation and verification mechanism in respect of Romania, in a case concerning the right of access to a court in the context of the premature termination of the mandate of the chief prosecutor of the National Anticorruption Directorate (*Kövesi v. Romania*, 2020, §§ 85-88 and 156);
- the impartiality of the court and the right to be presumed innocent of the applicant, who was convicted by the same judicial formation that had previously convicted his co-perpetrators on the basis of their plea-bargaining agreements (*Mucha v. Slovakia*, 2021, §§ 30-36, 58 and 61);
- the independence and impartiality of the Supreme Administrative Court to rule on its own liability for an alleged violation of EU law (*Doynov v. Bulgaria*, 2025, §§ 32-36, 59, 61);
- a judge's inability to seek judicial review of his transfer between two divisions of the same court (*Biliński v. Poland*, 2026, §§ 48-50, §§ 68-69, in which the Court held that it fully agreed with the findings of the CJEU, which had ruled on a similar issue).

112. In the case of *Spasov v. Romania*, 2022, the applicant had been convicted of fishing illegally inside Romania's exclusive economic zone in the Black Sea, which was a matter governed by a set of EU regulations known as the Common Fisheries Policy. The applicant submitted that his conviction had contravened those rules of EU law and therefore constituted a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1. The Court found that the European Commission had clearly indicated to the Romanian authorities that the proceedings against the applicant were contrary to EU law, well before the Court of Appeal had delivered its final judgment in his case (§ 95). Romania's failure to comply with its obligations under the Common Fisheries Policy had also been the subject of infringement proceedings in relation to the incident involving the applicant and other similar incidents (§ 96). The Court considered that in convicting the applicant, the Court of Appeal had committed a manifest error of law, such that he had been the victim of a "denial of justice" in violation of Article 6 § 1 of the Convention (§§ 97-99).

4. Defence rights

113. By way of example, the Court referred to European Union law in the following cases raising issues with regard to defence rights:

- *Meftah and Others v. France* [GC], 2002, §§ 32 and 45: lack of opportunity to make oral submissions at the Court of Cassation hearing, in person or through a member of the Bar;
- *Ibrahim and Others v. the United Kingdom* [GC], 2016, §§ 203-215, 259, 261, 264 and 271: delayed access to a lawyer during police questioning owing to an exceptionally serious and imminent threat to public safety;
- *Vizgirda v. Slovenia*, 2018, §§ 51-61, 82, 84 and 86: lack of interpreting during a criminal trial and lack of translation of the documents into a language of which the accused had sufficient knowledge;
- *Correia de Matos v. Portugal* [GC], 2018, §§ 76-80, 126, 130 and 136: inability of a lawyer to represent himself in the criminal proceedings against him.
- *Vasile Pruteanu and Others v. Romania*, 2025, §§ 63 and 76: whether there was a good reason for the absence of witnesses, where victims of human trafficking and sexual exploitation are concerned.

D. Private and family life and protection of correspondence[13]

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

1. Private life and data protection

114. The Court has referred to European Union law in ruling on the following matters concerning respect for private life and data protection:

- a change to the written form of the applicant's surname in her passport (*Mentzen v. Latvia* (dec.), 2004);
- the monitoring of the telephone calls of a member of the European Parliament against whom several sets of criminal proceedings had been brought, notwithstanding his parliamentary immunity (*Marchiani v. France* (dec.), 2008);
- the inability to access or secure rectification of personal data in the Schengen Information System (*Dalea v. France* (dec.), 2010);
- the lack of adequate and effective safeguards against arbitrariness in relation to a system of secret interception of mobile telephone communications (*Roman Zakharov v. Russia* [GC], 2015, §§ 145-147, 269);
- the monitoring of the Internet use of an employee in the workplace and the use of the data gathered as grounds for dismissal (*Bărbulescu v. Romania* [GC], 2017, §§ 44-51);

[13] For the applicable general principles see the Guide on Article 8 of the Convention and the Guide on data protection. See also the Handbook on European data protection law, joint publication of the Court and the EU Agency for Fundamental Rights, 2018, which covers the Court's case-law and also EU law and the CJEU's case-law.

- the refusal of permission to serve a defamation claim on a company registered abroad on the grounds that the alleged damage to the applicant's reputation was not real and substantial (*Tamiz v. the United Kingdom* (dec.), 2017, §§ 54-55 and 84);
- the requirement for elite athletes to provide advance information on their whereabouts for the purposes of random drug testing (*National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France*, 2018, §§ 55-56 and 182);
- the gathering by the police of information associated with the dynamic IP address used by the applicant, without a court order (*Benedik v. Slovenia*, 2018, §§ 53-62, 95 and 107);
- the refusal of the domestic courts to order the media to anonymise old Articles on the Internet concerning the applicants' criminal convictions (*M.L. and W.W. v. Germany*, 2018, §§ 57-63 and 97);
- the dismissal of employees who had been subjected to video surveillance by their employer on the company's premises (*López Ribalda and Others v. Spain [GC]*, 2019, §§ 63-66);
- a legal obligation for telecommunications providers to store personal details of all their customers, even where such details were not necessary for billing purposes or other contractual reasons, and the accessing of those data by the national authorities subject to certain conditions (*Breyer v. Germany*, 2020, §§ 46-55 and 93-94);
- the bulk interception of communications and intelligence sharing in the context of a secret surveillance regime (*Centrum för rättvisa v. Sweden* [GC], 2021, §§ 92-130; *Big Brother Watch and Others v. the United Kingdom* [GC], 2021, §§ 202-241; see also *Ekimdzhiev and Others v. Bulgaria*, 2022, §§ 230-245 and 419, concerning in particular the retention of, and access to, communications data);
- the obligation to provide fingerprints in order to apply for a passport, and the storage of those prints on an electronic chip in the passport (*Willems v. the Netherlands* (dec.), 2021, §§ 16-17 and 26-36);
- the duty to investigate allegations of sexual harassment in the workplace (*C v. Romania*, 2022, §§ 45-46 and 71);
- the collection of data concerning the sexual practices of a potential blood donor, based on speculation, and the excessive length of retention of the data by a public body (*Drelon v. France*, 2022, §§ 30-36, 47-55);
- a decision prohibiting the Jehovah's Witnesses religious community from collecting and processing personal data during door-to-door preaching without the data subject's consent (*Jehovah's Witnesses v. Finland*, 2023, §§ 39-41, §§ 85-87);
- the publication of the applicant's identifying data on the tax authority website portal for failing to fulfil his tax obligations (*L.B. v. Hungary* [GC], 2023, §§ 44-53);
- the obligation for the applicant to anonymise the online archived version of an Article (*Hurbain v. Belgium* [GC], 2023, § 183);
- the retention of telecommunications data in a general and indiscriminate manner in the context of criminal proceedings against a judge (*Škoberne v. Slovenia*, 2024, §§ 69-88, 133, 140-144);
- whether a Contracting State had jurisdiction in a case where nationals of another Contracting State prosecuted in the latter complained of the remote retrieval of EncroChat user data by the authorities of the first Contracting State (*A.L. and E.J. v. France* (dec.), 2024, § 105);
- whether there was an available domestic remedy to challenge the execution of a European Investigation Order (EIO) (*A.L. and E.J. v. France* (dec.), 2024, §§ 136-137, 144).

2. Family life

115. In the case of *Schalk and Kopf v. Austria*, 2010, which concerned the impossibility for same-sex couples to marry, the Court referred, *inter alia*, to European Union law in recognising that the relationship between the applicants, a cohabiting same-sex couple living in a stable *de facto* partnership, fell within the notion of "family life", just as the relationship of a different-sex couple in the same situation would (§§ 24-26 and 93-94).

E. Freedom of expression[14]

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

116. The Court referred to, or found support in, European Union law and the case-law of the CJEU in the following cases concerning freedom of expression:

- *Piermont v. France*, 1995: a measure expelling the applicant, a member of the European Parliament, from French Polynesia and prohibiting her from re-entering that territory, and a measure prohibiting her from entering New Caledonia, on account of utterances made during a demonstration (§§ 31-35);
- *Perinçek v. Switzerland [GC]*, 2015: measures to combat certain forms and expressions of racism and xenophobia, in the context of a case concerning the applicant's criminal conviction for rejecting the legal characterisation of atrocities committed by the Ottoman Empire against the Armenian people as "genocide" (§§ 82-90, 255 and 266);
- *Delfi AS v. Estonia* [GC], 2015: freedom to impart information in the context of an award of damages against an Internet news portal for offensive comments posted on its site by anonymous third parties (§§ 50-57, 128 and 147);
- *Magyar Helsinki Bizottság v. Hungary* [GC], 2016: freedom to receive information in the context of the authorities' refusal to provide an NGO with the names of public defenders and the number of their appointments (§§ 55-59 and 144);
- *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017: freedom to impart information in the context of a judicial decision prohibiting the mass publication by media companies of tax information (§§ 55-79, 133, 149-151, 158-159, 188, 193, 197 and 212);
- *Biancardi v. Italy*, 2021: civil judgment against a newspaper editor for refusing to de-index an Article on a criminal case against a private person that was easily accessible by typing the person's name into an Internet search engine (§§ 18-29, 53 and 67);

[14] For the applicable general principles see the Guide on Article 10 of the Convention.

- *Halet v. Luxembourg* [GC], 2023: criminal-law fine imposed on the applicant for disclosing to the media confidential documents from his private-sector employer concerning the tax practices of several multinational companies (§§ 58, 99, 101, 106);
- *Europa Way S.r.l. v. Italy*, 2025: suspension by ministerial decree and subsequent annulment by legislation of a bidding procedure for the allocation of frequencies for digital terrestrial television broadcasting. The Court considered that the annulment in question was not "prescribed by law" in so far as the CJEU had found the legislative provision in question to be incompatible with EU law and the *Consiglio di Stato* had accordingly declined to apply it (§§ 28-31, 48-49, 53-58, 73, 101, 115-117).

F. Freedom of assembly and association

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

117. The Guide on Article 11 of the Convention sets out in detail the applicable principles concerning freedom of assembly and association as guaranteed by the Convention. The Court referred to, or found support in, EU law and the case-law of the CJEU in the following cases concerning freedom of assembly and association:

- regarding the statutory ban on the funding of a French political party by a political party established in another EU member State (*Parti nationaliste basque – Organisation régionale d'Iparralde v. France*, 2007, §§ 31 and 48);
- concerning the functioning of the internal market and the free movement of goods among the member States, in this case following the blocking of trunk roads by farmers (*Kudrevičius and Others v. Lithuania* [GC], 2015, §§ 71-77): the Court held that it did not have to determine whether the measures adopted by the Lithuanian authorities could be justified in the light of the case-law of the CJEU, observing that the role of the latter was to establish whether the EU member States had complied with their obligation to ensure the free movement of goods, while the Court's task in the case at issue was to determine whether there had been an infringement of the applicants' right to freedom of assembly in the circumstances of the case (§ 184);
- regarding the right of civil servants to form a trade union, and the right to negotiate and enter into collective agreements (*Demir and Baykara v. Turkey* [GC], 2008, §§ 47, 51, 80, 105 and 150);
- concerning the unlawful nature of a boycott seeking to pressure a foreign company into a collective agreement in breach of the freedom of establishment guaranteed within the European Economic Area (*Norwegian Confederation of Trade Unions (LO) and Norwegian Transport Workers' Union (NTF) v. Norway*, 2021, §§ 67-69);
- regarding the application of legislation on foreign funding to non-governmental organisations and their directors, resulting in the imposition of fines, restriction of their

activities and even the dissolution of the organisations (*Ecodefence and Others v. Russia*, 2022, §§ 46-47, 132 and 166);

- regarding the characterisation of Hamas as a terrorist organisation (*Internationale Humanitäre Hilfsorganisation e. v. v. Germany*, 2023, §§ 39-41, 86, 92).

G. Equal treatment and prohibition of discrimination[15]

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 12

"1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

118. The case of *Stec and Others v. the United Kingdom* [GC], 2006, concerned differences between men and women regarding entitlement to social security benefits following a work-related injury. The applications were lodged with the Court after the CJEU had given a preliminary ruling on the matter at the request of the domestic courts. The CJEU had found that the domestic legislation in question was not incompatible with the Directive on equal treatment in social security. Although the issue which the Court was called upon to examine under Article 14 of the Convention differed from that examined by the CJEU, the Court considered that particular regard should be had to the strong persuasive value of the CJEU's finding (§ 58). The Court ultimately found that there had been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 (see also, to similar effect, *Walker v. the United Kingdom*, 2006; *Barrow v. the United Kingdom*, 2006).

119. The cases of *Napotnik v. Romania*, 2020, and *Jurčić v. Croatia*, 2021, concerned the issue whether the measures taken in respect of the applicants amounted to direct discrimination on grounds of sex (in this instance, on account of the fact that they were pregnant). In the first case the applicant, a diplomat posted abroad, had been recalled immediately after announcing that she was pregnant for the second time. In the second case the applicant was refused the status of an insured employee and a work-related benefit after her employment was found to be fictitious on account of her pregnancy.

The Court referred in its reasoning to European Union law, including the relevant case-law of the CJEU. It considered, like the CJEU, that a difference in treatment on grounds of pregnancy would amount to direct discrimination based on sex if it was not justified (*Napotnik v. Romania*, 2020, § 77; *Jurčić v. Croatia*, 2021, § 69).

In *Napotnik v. Romania*, 2020, the Court went on to distinguish the facts of the case from those examined by the CJEU (§ 82) before concluding that there had been no violation of Article 1 of Protocol No. 12 to the Convention. By contrast, in *Jurčić v. Croatia*, 2021, the Court found support in

[15] For the applicable general principles see the Guide on Article 14 and Article 1 of Protocol No. 12 to the Convention. See also the Handbook on European non-discrimination law, joint publication of the Court and the EU Agency for Fundamental Rights, 2018, which covers the Court's case-law and also EU law and the CJEU's case-law.

the CJEU's case-law and other international instruments (§§ 73, 76 and 84) in finding a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

120. The case of *Ferrero Quintana v. Spain*, 2024, concerned the imposition of a maximum age of 35 for a public competition to recruit police officers of lowest rank. The applicant, who had been provisionally authorised to take part in the various competition tests where he ranked 49th out of 60, was ultimately not recruited on the grounds that he was over the age-limit.

The Court referred to in its reasoning to the Employment Equality Directive[16] noting its contents and reiterating that the presence or absence of a common denominator in the legal systems of the Contracting States can be a relevant factor in determining the extent of the margin of appreciation (*Ferrero Quintana v. Spain*, 2024, § 84). The Court also referred to the relevant case-law of the CJEU concerning another applicant who had participated in the same contested competition. When assessing the legitimate aim pursued, the Court noted that the CJEU, in the aforementioned judgement, had concluded that the legitimate aim pursued constituted a legitimate objective within the meaning of Article 4 of the Employment Equality Directive (§ 89). Furthermore when assessing the proportionality of the measure, the Court considered, similarly to the CJEU, that the possession of particularly enhanced physical abilities had to be considered not statically, only at the time of the recruitment competition tests, but dynamically, taking into account the years of service that the officer would have to perform after having been recruited (§ 92).

121. The Court also referred to European Union law in ruling on the following issues concerning the prohibition of discrimination:

- the concept of indirect discrimination and the use of statistical data as evidence giving rise to a rebuttable presumption of discrimination (*D.H. and Others v. the Czech Republic* [GC], 2007, §§ 81-91, 103-104, 184 and 187);
- protection against discrimination based on a hereditary disorder (*G.N. and Others v. Italy*, 2009, § 52 and 126);
- the exclusion of non-residents from certain rights under health insurance contracts following legislative reform (*Ramaer and Van Willigen v. the Netherlands* (dec.), 2012, §§ 61-63, a case in which the domestic courts had previously requested the CJEU to give a preliminary ruling);
- the exclusion of same-sex couples from "civil unions", an official form of civil partnership for unmarried couples (*Vallianatos and Others v. Greece* [GC], 2013, §§ 31-34);
- the existence of more favourable family reunification conditions for persons having held the citizenship of the respondent State for at least 28 years (*Biao v. Denmark* [GC], 2016, §§ 56-59 and 134-135);
- the concept of discrimination by association (*Guberina v. Croatia*, 2016, §§ 40-42; *Molla Sali v. Greece* [GC], 2018, §§ 78-80);
- refusal to allow a woman, whose height and weight were below the requisite limits for female candidates, to sit an entrance examination to study military medicine (*Moraru v. Romania*, 2022, §§ 22-26, 42, 53-54);
- a difference in treatment on grounds of sex regarding the retirement age for civil servants (*Moraru and Marin v. Romania*, 2022, §§ 66-79): the Court criticised, in particular, the Romanian authorities' failure to engage meaningfully with the applicant's arguments concerning the compatibility of the domestic legislation with European Union law and the relevant judgments of the CJEU (§ 119, and see also *Pająk and Others v. Poland*, 2023,

[16] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000.

§§ 59-79, 218, 260-261, concerning a difference in treatment on grounds of sex and the retirement age for judges);

- the non-discriminatory denial of child benefits to two mothers, lawfully present in the State, for non-fulfilment of a habitual residence criterion under domestic law (*X and others v. Ireland*, 2023, §§ 50-53, 91-93);
- the existence of less favourable rules on the taxation of capital gains, made during purely internal securities exchange transactions, than on capital gains made during transactions falling under EU law (*De Galbert Defforey and Others v. France*, 2025, §§ 51-53, 94).

H. Right to the peaceful enjoyment of possessions[17]

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

122. In the context of cases examined under Article 1 of Protocol No. 1, the Court has referred to, or found support in, EU law in relation to the following matters:

- the impossibility of obtaining reimbursement by the State of overpaid VAT (*S.A. Dangeville v. France*, 2002, §§ 31-37, 46 and 56-57; see also *Aon Conseil et Courtage S.A. and Christian de Clarens S.A. v. France*, 2007, §§ 28 and 35-44): the Court observed that the interference in the case at issue had resulted not from any legislative intervention, but on the contrary from the legislature's failure to bring the domestic law into line with a European Union directive (*S.A. Dangeville v. France*, 2002, § 57);
- the inability to deduct VAT because of an error by one of the applicant company's suppliers (*"Bulves" AD v. Bulgaria*, 2009, §§ 29-32);
- the rules on gaming (*Monedero and Others v. France* (dec.), 2010);
- the imposition of a pollution tax on the import of second-hand cars from another European Union member State (*Ioviţoni and Others v. Romania* (dec.), 2012, §§ 20-24, §§ 33-34 and §§ 45-50; *Pop and Others v. Romania* (dec.), 2019, §§ 24-30, 53 and 62-63);
- the requirement to repay part of the State aid which the European Commission later found to be incompatible with EU law (*Heracles S.A. General Cement Company v. Greece* (dec.), 2016, §§ 35-41 and 67-70);
- the personal liability of a shareholder for the debts of a company wound up under special legislation on dormant companies (*Lekić v. Slovenia* [GC], 2018, § 126);
- unfair terms in consumer contracts (*Antonopoulou v. Greece* (dec.), 2021, §§ 38-43, 73-74 and 83);
- the freezing and confiscation of the proceeds of crime (*G.I.E.M. S.R.L. and Others v. Italy* [GC], 2018, §§ 147-153 and 273; *Todorov and Others v. Bulgaria*, 2021, §§ 115-120 and 214); see also *M.S.L., TOV v. Ukraine*, 2025, §§ 59-60 and 108, concerning the freezing of an applicant company's assets under a law passed in 2014 in response to threats to Ukraine's statehood and territorial integrity);

[17] For the applicable general principles see the Guide on Article 1 of Protocol No. 1 to the Convention.

- the confiscation of foreign currency not declared at the border (*Grifhorst v. France*, 2009, §§ 27-36, 90, 93, 102 and 104; *Imeri v. Croatia*, 2021, §§ 40-47, 72 and 84; *Stoyan Nikolov v. Bulgaria*, 2021, §§ 22-26 and 57-58; *Prenča v. Serbia*, 2025, §§ 45-48, 87-88, 103);
- the lack of procedural guarantees and of a reasonable opportunity to challenge the national bank's extraordinary measures cancelling shares and bonds (*Pintar and Others v. Slovenia*, 2021): the Court took account, in particular, of the fact that the provision of an effective remedy had been bound up in the case at issue with complex questions regarding respect for various principles under EU law, and that several requests had been made to the CJEU for a preliminary ruling (§ 101) (see also *Freire Lopes v. Portugal* (dec.), 2023, §§ 64-71, 87, 95, 99-100, concerning the failure to buy back shares sold by a bank that was wound up following its resolution by the country's central bank, a situation that was also the subject of a CJEU ruling);
- the lack of compensation for forestry proprietors in spite of a legally recognised right and approval by the European Commission of a draft governmental decision setting out the methodological rules for granting State aid as compensation for their inability to make use of their forests, which had been designated as protected natural areas for the purposes of the European "Natura 2000" network (*Associations of Communally-owned Forestry Proprietors Porceni Pleșa and Piciorul Bătrân Banciu v. Romania*, 2023, §§ 21, 26-28, 42, 68; compare with *Vendrame and Others v. Italy* (dec.), 2026, §§ 22-24, 64, concerning the lack of compensation for restrictions limiting the use of the applicants' land due to the establishment of a protected natural area in the context of the implementation of the EU Habitats Directive[18]).
- a confiscation order issued by the Italian authorities aimed at recovering from a museum in the US a bronze statue from the classical Greek period (*The J. Paul Getty Trust and Others v. Italy*, 2024, §§ 182-186, 279, 341, 358, 383).

123. The Court has dealt with cases concerning the austerity measures taken in several European Union member States in the context of the economic crisis of the late 2000s. The measures in question had been taken, in particular, under memorandums of understanding between the member States in the eurozone, the accompanying support mechanisms and the European Stability Mechanism (see, for instance, *Koufaki and ADEDY v. Greece* (dec.), 2013, §§ 18 and 38; *da Conceição Mateus and Santos Januário v. Portugal* (dec.), 2013, §§ 11 and 25; *da Silva Carvalho Rico v. Portugal* (dec.), 2015, §§ 22-24 and 39; *Mamatas and Others v. Greece*, 2016, §§ 54, 101-102, 115 and 118).

I. Elections to the European Parliament

Article 3 of Protocol No. 1

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

124. The Guide on Article 3 of Protocol No. 1 to the Convention sets out in detail the applicable principles concerning the right to free elections as guaranteed by the Convention.

[18] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206.

125. Article 3 of Protocol No. 1 is applicable to the election of members of the European Parliament (*Matthews v. the United Kingdom* [GC], 1999, § 44; *Occhetto v. Italy* (dec.), 2013, § 42; *Strack and Richter v. Germany* (dec.), 2016, § 22).

126. The case of *Tête v. France,* Commission decision, 1987, related in particular to the compatibility with Article 3 of Protocol No. 1 of the French legislation in force at that time on the election of French representatives to the European Parliament. The Commission held that the minimum threshold of five per cent required in order to secure seats in the European Parliament, and the fact that lists which failed to obtain five per cent of the votes cast could not claim reimbursement of their deposit and campaign expenses, pursued a legitimate aim from the standpoint of Article 3 of Protocol No. 1, namely to foster the emergence of sufficiently representative currents of thought. The Commission further held that the rules governing airtime for electoral broadcasts on radio and television, and the distinction made between groups represented in the French legislative assemblies and other lists, were not unjustified or disproportionate in view of the State's margin of appreciation. In the Commission's view, the regulations in question, even taken together, most certainly had not interfered with the free expression of the opinion of the people in the choice of the legislature.

127. The case of *Matthews v. the United Kingdom* [GC], 1999, concerned the impossibility for the applicant, a resident of Gibraltar, to register to vote in the 1994 European Parliament elections. The Court noted that when it had been decided to elect representatives to the European Parliament by direct universal suffrage, it had been specified that the United Kingdom would not apply the relevant provision to Gibraltar. However, in the Court's view, with the extension of the European Parliament's powers under the 1992 Maastricht Treaty, the United Kingdom should have ensured that the right to free elections would be guaranteed in Gibraltar. The United Kingdom had entered freely into the Maastricht Treaty; therefore, together with the other Parties to that Treaty, it was responsible *ratione materiae* under the Convention for its consequences (§ 33). The Court concluded that the applicant's inability to express her opinion in the choice of the members of the European Parliament had impaired the very essence of her right to vote (§§ 64-65).

128. In the cases of *Greens and M.T. v. the United Kingdom*, 2010, and *Kulinski and Sabev v. Bulgaria*, 2016, the Court found a violation of the right to vote as guaranteed by Article 3 of Protocol No. 1 on account of the blanket ban preventing the applicants from voting in elections to the European Parliament on the sole ground that they had been convicted of a criminal offence and were serving prison sentences. By contrast, in *Kalda v. Estonia (no. 2)*, 2022, the Court found no violation of Article 3 of Protocol No. 1, since the domestic courts had conducted a thorough assessment of the proportionality of the blanket ban on prisoners' voting rights as applied specifically to the applicant, a life prisoner convicted of several serious offences.

129. The case of *Occhetto v. Italy* (dec.), 2013, concerned the applicant's decision to relinquish his entitlement to a seat in the European Parliament. The dispute between the applicant and the candidate designated in his place was the subject of decisions by the Italian *Consiglio di Stato*, the electoral bureau of the European Parliament, and, at last instance, the CJEU. These had resulted ultimately in a ruling that the relinquishment was irrevocable and that the applicant was not entitled to sit as a member of the European Parliament. In the Court's view, the refusal of the *Consiglio di Stato* to accept the withdrawal of the applicant's relinquishment had pursued the legitimate aims of legal certainty in the electoral process and the protection of the rights of others, and in particular of the person who had been declared elected in his place (§ 49). Noting, among other points, that the applicant had relinquished his seat of his own free will, the Court found, in view of the margin of appreciation left to the member States in the matter, that there was no appearance of a violation of the Convention (§ 53).

130. In the case of *Mihaela Mihai Neagu v. Romania* (dec.), 2014, the applicant complained about the dismissal of her candidature for election to the European Parliament on the grounds that she

had not secured 100,000 signatures of support. In view of the latitude left by European Union law to the member States in establishing the criteria governing eligibility to stand for election, and of the particular circumstances of the case, the Court considered that the number of signatures required to submit a candidature had not entailed a breach of the right to stand for election to the European Parliament.

131. The Court has also found a minimum threshold of five per cent for the allocation of seats in the European Parliament to be compatible with Article 3 of Protocol No. 1 (*Strack and Richter v. Germany* (dec.), 2016, §§ 33-34; see also *Tête v. France*, Commission decision, 1987).

132. The decision in *Dupré v. France*, 2016, concerned the election of two additional French representatives to the European Parliament, in the middle of the parliamentary term, following the entry into force of the Lisbon Treaty. The French Government had chosen to have the new MEPs appointed by the National Assembly, from among its members, thus preventing the applicant from standing as a candidate. The Court accepted that this form of appointment had pursued a legitimate aim, in view of the risk of low participation, the high cost for only two seats, and the organisational complexity of the available alternatives (§ 25). On account of its limited impact and its transitional nature, the Court found that the measure had not been disproportionate to the legitimate aim pursued (§ 26).

J. The *ne bis in idem* principle

Article 4 of Protocol No. 7

> "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
>
> 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
>
> 3. No derogation from this Article shall be made under Article 15 of the Convention."

133. According to the *ne bis in idem* principle, no one may be tried or punished in criminal proceedings twice for the same offence. Both the Court and the CJEU have ruled on several occasions in cases concerning this right. The Court's case-law in the matter is dealt with in the Guide on Article 4 of Protocol No. 7.

134. The Court referred expressly to European Union law and the CJEU's case-law in the following cases:

- *Sergey Zolotukhin v. Russia* [GC], 2009, §§ 33-38 and 79, concerning the applicant's administrative conviction for "minor disorderly acts" and his subsequent prosecution for "disorderly acts" in respect of the same facts;
- *A and B v. Norway* [GC], 2016, §§ 51-52 and 118, concerning the imposition of tax surcharges on the applicants following administrative proceedings, and, in the context of parallel criminal proceedings, their conviction for tax fraud on account of the same omissions;
- *Krombach v. France* (dec.), 2018, §§ 16-18 and 38-39, concerning the applicant's criminal conviction in France for events in respect of which he submitted that he had previously been acquitted in Germany;

- *Seražin v. Croatia* (dec.), 2018, §§ 48-49, concerning the application of an exclusion measure prohibiting an individual convicted of hooliganism from attending sporting events;
- *Nodet v. France*, 2019, §§ 30-32, concerning the fines imposed by the financial markets regulator for manipulation of a share price, and subsequently by the criminal courts for the offence of obstructing the proper operation of the financial market in respect of the same shares;
- *Mihalache v. Romania* [GC], 2019, §§ 40-43, concerning the reopening by a higher-ranking authority of criminal proceedings that had been replaced by an administrative fine;
- *Bajćić v. Croatia*, 2020, § 14, concerning a penalty imposed for exceeding the speed limit, followed by a criminal conviction for causing a fatal road traffic accident;
- *Galović v. Croatia*, 2021, § 123, concerning several successive convictions for acts of domestic violence.

135. In the case of *Krombach v. France* (dec.), 2018, the applicant complained of a violation of his right not to be tried twice for the same acts on the grounds that he had been convicted in France for acts in respect of which criminal proceedings in Germany had been discontinued. The Court reiterated that, as could be seen from the terms of that provision, Article 4 of Protocol No. 7 did not prevent an individual from being tried or punished by the courts of a State Party to the Convention for an offence of which he or she had been acquitted or convicted by a final judgment in another State Party. In the Court's view, the fact that France and Germany were members of the European Union and that EU law lent a transnational dimension to the *ne bis in idem* principle at EU level was immaterial to the question of the applicability of Article 4 of Protocol No. 7 to the case at hand. In that regard, the Court reiterated that it had no jurisdiction to apply EU rules or to assess alleged violations of the latter, unless and in so far as such violations might have infringed the rights and freedoms secured by the Convention, and that the Convention did not prevent States Parties from granting wider legal protection to the rights and freedoms which it guaranteed, whether through domestic law, other international treaties or EU law (§§ 38-39).

K. Other matters

136. The Court has also referred to, or found support in, European Union law in examining the following issues:

- *the procedural obligations arising out of the right to life (Article 2 of the Convention)*: regarding the conditions of participation by the brother of a murder victim in the criminal proceedings (*Vanyo Todorov v. Bulgaria*, 2020, §§ 21-22 and 63-64);
- *the protection of crime victims (Articles 3 and 8 of the Convention)*: concerning the requirements as regards gathering and preserving evidence given by children, laid down in the EU directives on the protection of child victims of sexual abuse (*X and Others v. Bulgaria* [GC], 2021, §§ 135-137, 192 and 217; *R.B. v. Estonia*, 2021, §§ 47-48 and 88; see also, regarding an adult victim, *J.L. v. Italy*, 2021, §§ 69 and 120);
- *forced labour and action to combat human trafficking (Article 4 of the Convention)*: regarding the inadequate response of the authorities to a situation of human trafficking resulting from the exploitation of the vulnerability of undocumented migrant workers (*Chowdury and Others v. Greece*, 2017, §§ 45-47 and 106-107) and the domestic authorities' failure to take measures in line with international standards to protect minors suspected to be victims of trafficking (*V.C.L. and A.N. v. the United Kingdom*, 2021, §§ 106 and 158);
- *no punishment without law (Article 7 of the Convention)*: concerning the taking into account of sentences served in another European Union member State in the context of the Framework Decision on taking account of convictions in the Member States of the

European Union in the course of new criminal proceedings (*Arrozpide Sarasola and Others v. Spain*, 2018, §§ 73-77 and 124-127; see also *Picabea Ugalde v. Spain* (dec.), 2019), the requirement of foreseeability in respect of legislation transposing a European Union directive (*Georgouleas and Nestoras v. Greece*, 2020, §§ 22 and 66; see also *R.B. v. Italy**, 2026, §§ 52-53, 83, 98, concerning the foreseeability of a new interpretation of a statutory provision notably on account of the requirement laid down in EU law to criminalise the acts at stake), and the foreseeability requirement in relation to French legislation defining the term "medicinal product", which was based word for word on a European directive (*Cantoni v. France*, 1996, §§ 12-17 and 30);

- *retrospective application of the more favourable criminal law (Article 7 of the Convention)*: regarding the principle of retrospective application of the more lenient criminal law, which also emerges from the CJEU's case-law as forming part of the constitutional traditions common to the member States (*Scoppola v. Italy (no. 2)* [GC], 2009, §§ 37-38 and 105). In *Soros v. France*, 2011, the applicant complained of the fact that the European Union legislation on insider trading, which in his view was more favourable to him than domestic law, had not been applied in the proceedings against him. Even assuming that to be the case the Court found that it did not need to examine the complaint, since in any event the domestic legislation was in itself sufficiently foreseeable (§§ 38-41 and 70);
- *protection of the environment*: concerning pollution from ships and environmental crime (*Mangouras v. Spain* [GC], 2010, §§ 36-43), the prolonged failure by the authorities to ensure the collection, treatment and disposal of rubbish (*Di Sarno and Others v. Italy*, 2012, §§ 52-56, 71-75, 108 and 111; see also *Locascia and Others v. Italy*, 2023, §§ 18-23, 83, 128, 135, 147, in which the Court relied on the relevant CJEU judgments in that domain to establish the facts of the case), the obligation to fight against climate change (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], 2024, §§ 105, 201-222, 253, 492), or the obligation to conduct an environmental impact assessment before granting petroleum exploration licences (*Greenpeace Nordic and Others v. Norway*, 2025, §§ 146-159, 294, 334, 336);
- *freedom of thought, conscience and religion (Article 9 of the Convention)*: concerning the right to conscientious objection with respect to military service, referred to in Article 10 § 2 of the Charter of Fundamental Rights of the European Union (*Bayatyan v. Armenia* [GC], 2011, §§ 56-57, 74, 106);
- *slaughter of animals and freedom of religion (Articles 9 and 14 of the Convention)*: concerning the refusal by the authorities to grant the official approval needed to allow ritual slaughter to be performed in accordance with the prescriptions of the Jewish religion (*Cha'are Shalom Ve Tsedek v. France* [GC], 2000, §§ 51-52) or the prohibition of the ritual slaughter of animals without prior stunning (*Executief van de Moslims van België and Others v. Belgium*, 2024, §§ 35-38), where the Court noted that, unlike the Convention, EU law expressly established animal welfare as a general interest objective (§§ 93 and 107);
- *the right to marry (Article 12 of the Convention)*: regarding the reference to men and women in the Convention, unlike in the Charter of Fundamental Rights of the European Union (*Christine Goodwin v. the United Kingdom* [GC], 2002, §§ 58 and 100; *I. v. the United Kingdom* [GC], 2002, §§ 41 and 80). In the case of *Schalk and Kopf v. Austria*, 2010, the Court took the EU Charter of Fundamental Rights into consideration in finding that the right to marry enshrined in Article 12 of the Convention should no longer in all circumstances be limited to marriage between two persons of opposite sex (§§ 24-26 and 60-61);
- *detention and misuse of power (Article 18 of the Convention)*: regarding the concept of misuse of power in the context of the pre-trial detention of an opposition party leader on

grounds unconnected to the offence he was suspected of committing (*Merabishvili v. Georgia* [GC], 2017, §§ 155-156 and 306);

- *freedom of movement (Article 2 of Protocol No. 4)*: regarding a measure expelling a member of the European Parliament from the territory and prohibiting her from re-entering (*Piermont v. France*, 1995, §§ 31-35), and several prohibitions on leaving the country imposed on an EU national on account of a criminal conviction (*Nalbantski v. Bulgaria*, 2011, §§ 28-29, 59 and 62);
- *the right to enter one's own country (Article 3 § 2 of Protocol No. 4)*: regarding the consular protection of EU citizens, in a case concerning the French authorities' refusal to repatriate nationals held with their children in Kurdish-run camps after the fall of "Islamic State" (*H.F. and Others v. France* [GC], 2022, §§ 133-137, 258, 269).

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Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

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The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties.

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