# Leading Judgments of the European Court of Human Rights on EU Law

**Johan Callewaert**[1]

This paper, updated as of 1 October 2026, contains summary presentations of leading judgments, sorted by area, reflecting the approach of the European Court of Human Rights to European Union law. Its purpose is to give a general overview of the fundamental elements and key principles established in the Strasbourg case law on EU law.

## Responsibility of EU member States

- *X and X v. the Federal Republic of Germany*, Commission decision, 1958: State responsibility where Convention obligations are breached as a result of a new international agreement concluded by that State (here the 1954 Paris Agreements).
- *Tête v. France*, Commission decision, 1987: State responsibility under the Convention is not affected by the transfer of competences to the European Communities.
- *Cantoni v. France* [GC], 1996: State responsibility under the Convention where a national provision is based word for word on a Community Directive.
- *Matthews v. the United Kingdom* [GC], 1999: State responsibility under the Convention for the consequences of the application of primary law outside the scope of review of validity of the Court of Justice of the European Union (CJEU). Convention rights continue to be secured where competences are transferred to international organisations.
- *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005: State responsibility under the Convention for the consequences of the application of a Regulation.
- *Boivin v. 34 member States of the Council of Europe* (dec.), 2008: State responsibility under the Convention not engaged in the context of a dispute (i) lying within the internal legal order of an international organisation with a legal personality separate from that of its member States and (ii) in which those States have not intervened directly or indirectly.

## Admissibility conditions

- *Confédération Française Démocratique du Travail v. European Communities*, Commission decision, 1978: Inadmissibility *ratione personae* of applications against the European Communities, which are not parties to the Convention.

## Equivalent protection

- *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005:
  - Equivalence found between the protection of fundamental rights afforded by EU law and by the Convention;
  - Member State's application of a Regulation is accordingly presumed to be compliant with the Convention ("*Bosphorus* presumption");
  - Application of the presumption of compliance is subject to the absence of any discretion on the part of the national authorities;
  - Rebuttal of such presumption on a case-by-case basis if the protection of Convention rights is manifestly deficient, in which case the interest of international cooperation is

[1] Professor at the Universities of Louvain and Speyer; Visiting Professor at Sciences Po Paris; former Deputy Grand Chamber Registrar at the European Court of Human Rights (2006-2025).

outweighed by the Convention's role as a constitutional instrument of European public order.

- *Michaud v. France*, 2012: *Bosphorus* presumption inapplicable where the full potential of the supervisory mechanism provided for by EU law has not been deployed (lack of relevant CJEU case-law in this case).
- *Boivin v. 34 member States of the Council of Europe* (dec.), 2008: If no "equivalence" found between the protection of rights under the Convention and those under the legal order of an international organisation (in this case, the International Labour Organization – ILO), the *Bosphorus* presumption does not apply and the Court is not required to examine whether that presumption would be rebutted in the case in issue.
- *Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands* (dec.), 2009:
  - Applicability of the *Bosphorus* presumption to procedures followed within the EU legal system and resulting from an intervention by a member State (in this case, a request for a preliminary ruling from the CJEU);
  - Rebuttal of the presumption where the protection of Convention rights is manifestly deficient.
- *Ilias and Ahmed v. Hungary* [GC], 2019:
  - *Bosphorus* presumption not applicable where the State is afforded discretion in implementing directives establishing the Common European Asylum System;
  - Assessment of whether compliance with Articles 3 and 5 of the Convention is met by national measures based on Articles 33, 38 and 43 of Directive 2013/32/EU[2], which give States the possibility of foregoing an examination of requests for international protection on the merits and instead determining whether it can reasonably be assumed that another country will conduct the examination on the merits or grant protection to the asylum seeker;
  - Violation of Article 3 of the Convention by Hungary (procedural obligation to assess the risks for the applicants of treatment contrary to Article 3). Any State wishing to remove an asylum seeker to a third intermediary country without examining the asylum request on the merits has a duty to examine thoroughly the question of whether or not there is a real risk of the asylum seeker being denied access, in the receiving third country, to an adequate asylum procedure which protects him or her against refoulement.

## Mutual recognition (in general)

- *Avotiņš v. Latvia* [GC], 2016:
  - Reiteration of the conditions for application of the *Bosphorus* presumption in the event of equivalent protection;
  - Prohibition on the automatic and mechanical application by the domestic courts of mutual-recognition mechanisms;
  - Where protection of a Convention right is manifestly deficient as a result of a mutual-recognition mechanism, and in the absence of an available remedy under EU law, the national courts cannot refrain from examining a serious and substantiated complaint being raised under the Convention.

## European arrest warrant

- *Pirozzi v. Belgium*, 2018:
  - Convention obligation for the national authorities to read and apply the rules of EU law in compliance with the Convention;

[2] Directive 2013/32/UE of the European Parliament and the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

- Convention obligation for the national authorities to refuse to execute a European arrest warrant where it would result in manifestly deficient protection of Convention rights in the issuing State.

- *Romeo Castaño v. Belgium*, 2019:
  - Refusal to transfer a homicide suspect under a European arrest warrant may give rise to a violation of the obligation for the States concerned to cooperate effectively with each other in order to elucidate the circumstances of the killing and to bring the perpetrators to justice, within the meaning of the *Güzelyurtlu* case-law (Article 2, procedural limb);
  - This obligation to cooperate does not release the domestic authorities in the executing State from ensuring that the transfer of the person in question will not expose him or her to a risk of ill-treatment (Article 3);
  - Refusal to execute a European arrest warrant because of the risk of a violation of a Convention right in the issuing State must have a sufficient and up-to-date factual basis.
- *Bivolaru and Moldovan v. France*, 2021:
  - Convention obligation for EU member States to read and apply the rules of EU law in compliance with the Convention;
  - Violation of Article 3 of the Convention where a European arrest warrant is executed despite a sufficient factual basis showing a real risk of ill-treatment to the individual in the issuing State.

## Dublin Regulation[3]

- *M.S.S. v. Belgium and Greece* [GC], 2011:
  - *Bosphorus* presumption not applicable where the State is afforded discretion in implementing the "Dublin II" Regulation;
  - Risk of a violation of Article 3 (conditions of detention and living conditions) and Article 13 (shortcomings in the asylum procedure and risk of chain refoulement) in the event of a transfer to Greece under the "Dublin II" Regulation.
- *Tarakhel v. Switzerland* [GC], 2014:
  - Violation of Article 3 of the Convention where asylum seekers are returned to their country of first arrival, on account of the situation with regard to the reception system in that country;
  - Absence of detailed and reliable information concerning the specific reception facility of destination;
  - Absence of individual guarantees that the applicants will be supported in a manner adapted to the young age of the children and that the family will be kept together.
- *A.M.E. v. the Netherlands* (dec.), 2015: Application inadmissible because no elements to establish that the applicant's return under the "Dublin II" Regulation to the country of first arrival in the European Union would, whether taken from a material, physical or psychological perspective, disclose a sufficiently real and imminent risk of hardship severe enough to fall within the scope of Article 3.
- *H.T. v. Germany and Greece,* 2024: Removal of asylum-seekers under the Dublin Regulation precluded by Article 3 of the Convention in the absence of an individualized risk assessment based either on a sufficient basis for a general presumption of an access to an adequate asylum procedure or guarantees in that respect by an administrative arrangement or by individual assurances.

[3] Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national; replaced by Regulation (EU) No 604/2013 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.

## Deprivation of liberty

- *Thimothawes v. Belgium*, 2017: Domestic law to be complied with under Article 5 of the Convention includes the domestic law originating in applicable international and EU law
- *M.B. v. the Netherlands*, 2024:
  - Immigration detention of applicant pending assessment of his asylum application on public order grounds;
  - Violation of Article 5 § 1 of the Convention: lack of sufficiently close connection between aim of preventing unauthorized entry and immigration detention;
  - "Although Article 8 (3) e of the Reception Conditions Directive permits, from an EU-law standpoint, detention when national security or protection of public order so requires, this has no bearing on the fact that Article 5 § 1 (f) of the Convention only allows for immigration detention to prevent unauthorized entry or to effect deportation" (§ 72).

## International child abduction

- *Šneersone and Kampanella v. Italy*, 2011:
  - Prohibition on the automatic application of the return mechanisms for abducted children provided for in the 1980 Hague Convention[4];
  - Obligation for the national courts to conduct an in-depth examination, adopting an *in concreto* approach, of the conditions of the child's return, in particular taking into account each individual's best interests as well as the entire family situation and a whole series of factual, emotional, psychological, material and medical factors;
  - Where such an in-depth examination establishes a "grave risk" that the child's return would be contrary to his or her best interests, execution of the obligation under the Hague Convention or the "Brussels II bis" Regulation[5] would breach Article 8 of the Convention.
- *Royer v. Hungary*, 2018:
  - Obligation for domestic courts to conduct an examination *in concreto* of the conditions of the child's return;
  - Prohibition on the automatic application of the mutual-recognition mechanism established under Article 11 § 8 of the "Brussels II bis" Regulation[5];
  - Where there is a "grave risk" that the child's fundamental rights will be infringed, Article 8 of the Convention precludes the child's return unless there are adequate safeguards and, in the event of a known risk, unless tangible protection measures are put in place by the State of the child's habitual residence.

## Referrals for a preliminary ruling by the CJEU

- *Ullens de Schooten and Rezabek v. Belgium*, 2011:
  - The Convention does not guarantee any right to have a case referred by a national court to another authority for a preliminary ruling;
  - Obligation under Article 6 of the Convention for domestic courts to give reasons for refusing to refer a question for a preliminary ruling as requested by a party to the proceedings;
  - Obligation for national courts against whose decisions there is no remedy under domestic law, to give reasons for their refusal to request a preliminary ruling from the CJEU in the

[4] Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

[5] 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.

light of the exceptions provided for in that court's case-law (*Cilfit*[6]);

- The Court does not review whether the reasons for the refusal are compatible with EU law but only whether those reasons are based on the CJEU's *Cilfit* case-law.

- *Dhahbi v. Italy*, 2014:
  - Obligation for national courts against whose decisions there is no remedy under national law, to give reasons for their refusal to request a preliminary ruling from the CJEU in the light of the exceptions provided for in that court's case-law;
  - No reasons given in this case for refusing to request a preliminary ruling from the CJEU.
- *Baydar v. the Netherlands*, 2018: Acceptance of a complaint's dismissal using summary reasoning, without dealing explicitly with the request for a preliminary reference to the CJEU.
- *Sanofi Pasteur v. France*, 2020: Obligation on the domestic court to refer explicitly, in the light of the circumstances of the case, to one of the three situations provided for by the CJEU's *Cilfit* judgment, provided that the request for a preliminary ruling was very precisely worded in accordance with the requirements of domestic law, and that the appeal on points of law was not dismissed as inadmissible or as lacking arguable grounds of appeal.
- *Georgiou v. Greece*, 2023: Recommendation to reopen judicial proceedings resulting from the respondent State's highest court's refusal, without giving reasons, to request a preliminary ruling.

## Manifest error of law

- *Spasov v. Romania*, 2022:
  - Violation of Article 6 of the Convention where the national courts committed a manifest error of law, basing the applicant's conviction on a misinterpretation of EU law and on national provisions in clear breach of that law;
  - Violation based on a finding by the European Commission that domestic law was incompatible with EU law.

## Further sources

- Guide on European Union law in the Court's case-law
- The obligation to give reasons for a refusal to make a preliminary reference to the CJEU
- Trends 2021-2026: Taking stock of the interplay between the European Convention on Human Rights and EU law

[6] Judgment of the Court of Justice of the European Communities of 6 October 1982, *CILFIT and Others*, 283/81.

## KEY CASE-LAW REFERENCES (in chronological order)

- *X and X v. the Federal Republic of Germany*, no. 235/56, Commission decision of 10 June 1958, Yearbook 2 (Article 6 § 1 : inadmissible – manifestly ill-founded) ;
- *Confédération Française Démocratique du Travail v. European Communities*, no. 8030/77, Commission decision of 10 July 1978, Decisions and Reports 13 (Articles 11, 13 et 14 : inadmissible – incompatibility *ratione personae*) ;
- *Tête v. France*, no. 11123/84, Commission decision of 9 December 1987, Decisions and Reports 54 (Articles 3 of Protocol No. 1, 13 et 14 : inadmissible – manifestly ill-founded) ;
- *Cantoni v. France* [GC], no. 17862/91, ECHR 1996-V (no violation of Article 7) ;
- *Matthews v. the United Kingdom* [GC], no. 24833/94, ECHR 1999-I (no violation of Article 3 of Protocol No. 1) ;
- *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, ECHR 2005-VI (no violation of Article 1 of Protocol No. 1) ;
- *Boivin v. 34 member States of the Council of Europe* (dec.), no. 73250/01, ECHR 2008 (Articles 6 § 1, 13 et 14 : inadmissible – incompatibility *ratione personae*) ;
- *Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands* (dec.), no. 13645/05, ECHR 2009 (Article 6 § 1 : inadmissible – manifestly ill-founded) ;
- *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, ECHR 2011 (violation of Article 3 and of Article 13 combined with Article ) ;
- *Šneersone and Kampanella v. Italy*, no. 14737/09, 12 July 2011 (violation of Article 8 in respect of the first applicant ; no. violation of Article 8 in respect of the second applicant) ;
- *Ullens de Schooten and Rezabek v. Belgium*, nos. 3989/07 and 38353/07, 20 September 2011 (no violation of Article 6 § 1) ;
- *Michaud v. France*, no. 12323/11, ECHR 2012 (no violation of Article 8) ;
- *Dhahbi v. Italy*, no. 17120/09, 8 April 2014 (no violation of Articles 6 § 1 and 14 combined with Article 8) ;
- *Tarakhel v. Switzerland* [GC], no. 29217/12, ECHR 2014 (extracts) (violation of Article 3) ;
- *A.M.E. v. the Netherlands* (dec.), no. 51428/10, 13 January 2015 (Article 3 : inadmissible – manifestly ill-founded) ;
- *Avotiņš v. Latvia* [GC], no. 17502/07, 23 May 2016 (no violation of Article 6 § 1) ;
- *Thimothawes v. Belgium*, no. 39061/11, 4 April 2017 (no violation of Article 5 § 1)
- *Royer v. Hungary*, no. 9114/16, 6 March 2018 (no violation of Article 8) ;
- *Pirozzi v. Belgium*, no. 21055/11, 17 April 2018 (no violation of Articles 5 § 1 et 6 § 1) ;
- *Baydar v. the Netherlands*, no. 55385/14, 24 April 2018 (no violation of Article 6 § 1) ;
- *Romeo Castaño v. Belgium*, no. 8351/17, 9 July 2019 (violation of Article 2 (procedural)) ;
- *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, 21 November 2019 (violation of Article 3) ;
- *Sanofi Pasteur v. France*, no. 25137/16, 13 February 2020 (violation of Article 6 § 1) ;
- *Bivolaru and Moldovan v. France*, nos. 40324/16 and 12623/17, 25 March 2021 (violation of Article 3) ;
- *Spasov v. Romania*, no. 27122/14, 6 December 2022 (violation of Articles 6 § 1 and 1 of Protocol No. 1) ;
- *Georgiou v. Greece*, no. 57378/18, 14 March 2023 (violation of Article 6 § 1);
- *M.B. v. the Netherlands*, no. 71008/16, 23 April 2024 (violation of Article 5 § 1);
- *H.T. v. Germany and Greece*, no. 13337/19, 15 October 2024 (violation of Articles 3 (substantive and procedural) and 5 §§ 1 and 4).