December 2022
This factsheet does not bind the Court and is not exhaustive

Case-law concerning the European Union

To date, the European Union (EU) is not yet a Party to the European Convention on Human Rights (the Convention)[1]. Accordingly, its acts cannot as such be the subject of applications to the European Court of Human Rights (the Court).

Nevertheless, issues relating to Community law have been raised regularly with the Court and the former European Commission of Human Rights[2].

The principles established by the European Commission of Human Rights

Responsibility of a State which signs up to two treaties successively

As far back as 1958 the European Commission of Human Rights ruled that "if a State contracts treaty obligations and subsequently concludes another international agreement which disables it from performing its obligations under the first treaty, it will be answerable for any resulting breach of its obligations under the earlier treaty" (*X v. Germany*, application no. 235/56, decision of the Commission of 10 June 1958, *Yearbook 2*, p. 256). This was particularly so in cases where the obligations in question had been assumed in a treaty, the European Convention on Human Rights, whose guarantees affected "the public order of Europe" (*Austria v. Italy*, no. 788/60, decision of the Commission of 11 January 1961, *Yearbook 4*, p. 116).

Inadmissibility of applications against the European Communities

Confédération Française Démocratique du Travail v. the European Communities, alternatively: their Member States a) jointly and b) severally

Decision of the European Commission of Human Rights of 10 July 1978

A French trade union complained of the fact that the French Government had not proposed it as a candidate for appointment, by the Council of the European Communities, to the Consultative Committee attached to the High Authority of the ECSC (European Coal and Steel Community).

[1] On the EU accession to the European Convention on Human Rights, see the thematic file available on the Council of Europe's internet site.

[2] Together with the European Court of Human Rights and the Committee of Ministers of the Council of Europe, the European Commission of Human Rights, which sat in Strasbourg from July 1954 to October 1999, supervised Contracting States' compliance with their obligations under the European Convention on Human Rights. The Commission ceased to exist when the Court became permanent on 1st November 1998.

The Commission held that applications against the European Communities were to be declared **inadmissible** as being directed against a "person" not a Party to the Convention.

Possibility of bringing a case against a State for national measures giving effect to Community law

Etienne Tête v. France

Decision of the Commission of 9 December 1987

A French politician complained about the Law on the election of French representatives to the European Parliament, which he considered discriminatory and in breach of the right to free elections. He alleged, *inter alia*, that he had not had an effective remedy in that regard.

The applicant's complaints concerned a law enacted in a sphere in which the State had a wide margin of appreciation. The Commission stressed that, in principle, the State's responsibility could be engaged, as it could not be accepted that by means of transfers of competence the States Parties to the Convention could at the same time exclude matters normally covered by the Convention from the guarantees enshrined therein. It nevertheless declared the application **inadmissible** (manifestly ill-founded), finding in particular that no violation of Article 3 (right to free elections) of Protocol No. 1 to the Convention, taken alone or in conjunction with Article 14 (prohibition of discrimination) of the Convention, could be found in this case.

Presumption that the European Communities guarantee protection of fundamental rights at a level equivalent to that provided by the Convention

M & Co. v. Federal Republic of Germany (application no. 13258/87)

Decision of the Commission of 9 January 1990

The applicant company complained of the fact that Germany had enforced a fine imposed on it by the European Commission (in anti-trust proceedings) and upheld by the Court of Justice of the European Communities. It considered that several of its rights had been breached, including the right to be presumed innocent.

The European Commission of Human Rights noted that Germany's responsibility could in principle be engaged by virtue of the action it had taken to give effect to Community law (in respect of which it had no margin of appreciation). However, it declared the application **inadmissible** on the ground that the legal system of the European Communities guaranteed protection of fundamental rights at a level equivalent to that provided by the European Convention on Human Rights.

The principles established by the European Court of Human Rights

Possibility of bringing a case against a State for national measures giving effect to Community law

Cantoni v. France

Judgment of 15 November 1996

A supermarket manager contended that his conviction for unlawfully selling pharmaceutical products had not been foreseeable because the definition of a "medicinal product" was too imprecise in the French legislation, which was based almost word for word on a Community directive.

In the European Court of Human Rights' view, the last-mentioned fact "[did] not remove [the impugned provision] from the ambit of Article 7 [no punishment without law] of the

Convention". The respondent State had a wide margin of appreciation in applying Community law and could therefore have been held responsible for a breach of the Convention. On the merits, the Court held that there had been **no violation of Article 7** of the Convention.

Responsibility of a State for the consequences of a treaty which it had been involved in adopting

Matthews v. the United Kingdom

Judgment (Grand Chamber) of 18 February 1999

A United Kingdom national resident in Gibraltar alleged a breach of her right to free elections on account of the fact that the United Kingdom had not organised elections to the European Parliament in Gibraltar.

The Court reiterated that the European Convention on Human Rights did not exclude the transfer of competences to international organisations provided that Convention rights continued to be "secured". Member States' responsibility therefore continued even after such a transfer.

The Court further 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 provisions within the United Kingdom only (hence not in Gibraltar). With the extension of the powers of the European Parliament under the Maastricht Treaty, the United Kingdom should have amended its legislation to ensure that the right to free elections (Article 3 of Protocol No. 1 to the Convention) – which applied to the "choice of the legislature" – was guaranteed in Gibraltar. The United Kingdom had freely entered into the Maastricht Treaty. Together with the other Parties to that Treaty, it was therefore responsible *ratione materiae* under the Convention for its consequences. The Court held that there had been a **breach of Article 3** (right to free elections) **of Protocol No. 1** to the Convention.

Equivalent protection

"Bosphorus Airways" v. Ireland (no. 45036/98)

Judgment (Grand Chamber) of 30 June 2005

An aircraft leased by the applicant company to a Yugoslavian company was impounded in 1993 by the Irish authorities under a Community Regulation giving effect to UN sanctions against the Federal Republic of Yugoslavia.

The Court stated that where a State transferred sovereign powers to an international organisation, "absolving Contracting States completely from their Convention responsibility in the areas covered by such a transfer would be incompatible with the purpose and object of the Convention; the guarantees of the Convention could be limited or excluded at will, thereby depriving it of its peremptory character and undermining the practical and effective nature of its safeguards" (§ 154 of the judgment). For the first time it agreed to examine on the merits a complaint concerning measures taken to give effect to Community law where the State had no margin of appreciation. It took the view that Ireland had merely complied with its legal obligations flowing from membership of the European Community. Furthermore, and most importantly, it held that it was not necessary to examine whether the measure had been proportionate to the aims pursued, given that "the protection of fundamental rights by Community law [is] ... "equivalent" ... to that of the Convention system" (§ 165). Accordingly, "the presumption [arose] that Ireland did not depart from the requirements of the Convention when it implemented legal obligations flowing from its membership of the European Community" (§ 165).

Povse v. Austria

Decision on the admissibility of 18 June 2013

This case concerned the return of a child from one member State of the European Union to another. Pursuant to the Brussels IIa Regulation, a court in one EU member State can

request a court in another member State to enforce the return of a child to the former State in the wake of family law proceedings. The applicants were an Austrian national and her minor daughter, who has Austrian and Italian citizenship. The mother had moved to Austria with her daughter without the father's consent. They complained of the Austrian courts' ordering the enforcement of a judgment by an Italian court, which had awarded sole custody of the child to her Italian father and had ordered her return to him. Relying on Article 8 (right to respect for private and family life) of the Convention, the applicants contended that the Austrian courts had limited themselves to ordering the enforcement of the Italian court's judgment without examining the argument that the child's return to Italy would be against her interest.

The Court declared the application **inadmissible** (manifestly ill-founded). It held in particular that the Austrian courts had done no more than implement their obligation under the law of the European Union. Under the Brussels IIa Regulation they had been obliged to respect the terms of the judgment issued by the Italian court ordering the return of the child. The Austrian courts could be presumed to have acted in compliance with its Convention obligations, having regard to the fact that the legal order of the European Union secured protection of fundamental rights in a manner equivalent to that provided by the Convention system. The Italian court had heard the parties and had assessed whether the child's return would entail a grave risk for her. Moreover, the Austrian courts had sought a preliminary ruling from the Court of Justice of the European Union, which had reviewed the scope of the Regulation and had found that any alleged change in the circumstances of the applicants' situation since the issuing of the return order had to be addressed to the Italian courts, which were competent to rule on a possible request for a stay of enforcement of the order. The Court also observed that should any action filed by the applicants before the Italian courts fail, it would be open to them to lodge an application with the Court against Italy.

Avotiņš v. Latvia

Judgment (Grand Chamber) of 23 May 2016

This case concerned the enforcement in Latvia of a judgment delivered in 2004 in Cyprus with regard to the repayment of a debt. The applicant complained that the Latvian courts had authorised the enforcement of the Cypriot judgment which, in his opinion, had been delivered in breach of his defence rights and had thus been clearly unlawful. Before the Latvian courts he had claimed in particular that the recognition and enforcement of the Cypriot judgment in Latvia infringed a regulation of the Council of the European Union, namely the "Brussels 1 Regulation".

The Court did not consider that the protection of fundamental rights had been manifestly deficient such that the presumption of equivalent protection was rebutted and held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention. It notably reiterated that, when applying European Union law, the Contracting States remained bound by the obligations they had entered into on acceding to the European Convention on Human Rights. Those obligations were to be assessed in the light of the presumption of equivalent protection established by the Court in the *"Bosphorus Airways" v. Ireland* judgment (see above) and developed in the *Michaud v. France* judgment (see below). In the present case, the Court held in particular that it had been up to the applicant himself, after he became aware of the judgment given in Cyprus, to enquire as to the remedies available in Cyprus. The Court considered that the applicant should have been aware of the legal consequences of the acknowledgment of debt deed which he had signed. That deed, governed by Cypriot law, had concerned a sum of money which he had borrowed from a Cypriot company, and contained a clause conferring jurisdiction on the Cypriot courts. Accordingly, he should have ensured that he was familiar with the manner in which possible proceedings would be conducted before the Cypriot courts. As a result of his inaction and lack of diligence, the applicant had therefore contributed to a large extent to the situation of which he complained before the Court and which he could have prevented.

Pirozzi v. Belgium

Judgment of 17 April 2018

See below, under "European arrest warrant".

Bivolaru and Moldovan v. France

Judgment of 25 March 2021

See below, under "European arrest warrant".

Dublin regulation[3]

M.S.S. v. Belgium and Greece (no. 30696/09)

Judgment (Grand Chamber) of 21 January 2011

The applicant is an Afghan national who entered the EU via Greece before arriving in Belgium, where he applied for asylum. In accordance with the Dublin II Regulation, the Belgian Aliens Office asked the Greek authorities to take responsibility for the asylum application. The applicant complained in particular about the conditions of his detention and his living conditions in Greece, and alleged that he had no effective remedy in Greek law in respect of these complaints. He further complained that Belgium had exposed him to the risks arising from the deficiencies in the asylum procedure in Greece and to the poor detention and living conditions to which asylum seekers were subjected there. He further maintained that there was no effective remedy under Belgian law in respect of those complaints.

Regarding in particular the applicant's transfer from Belgium to Greece, the Court held, considering that reports produced by international organisations and bodies all gave similar accounts of the practical difficulties raised by the application of the Dublin system in Greece, and the United Nations High Commissioner for Refugees had warned the Belgian Government about the situation there, that the Belgian authorities must have been aware of the deficiencies in the asylum procedure in Greece when the expulsion order against him had been issued. Belgium had initially ordered the expulsion solely on the basis of a tacit agreement by the Greek authorities, and had proceeded to enforce the measure without the Greek authorities having given any individual guarantee whatsoever, when they could easily have refused the transfer. The Belgian authorities should not simply have assumed that the applicant would be treated in conformity with the Convention standards; they should have verified how the Greek authorities applied their asylum legislation in practice; but they had not done so. There had therefore been a **violation *by Belgium* of Article 3** (prohibition degrading treatment) of the Convention. As far as Belgium is considered, the Court further found a **violation of Article 13** (right to an effective remedy) **taken together with Article 3** of the Convention because of the lack of an effective remedy against the applicant's expulsion order.

In respect of Greece, the Court found a **violation of Article 13 taken in conjunction with Article 3** of the Convention because of the deficiencies in the Greek authorities' examination of the applicant's asylum application and the risk he faced of being removed directly or indirectly back to his country of origin without any serious examination of the merits of his application and without having had access to an effective remedy. As far as Greece is concerned, the Court further held that there had been a **violation of Article 3** (prohibition of degrading treatment) of the Convention both because of the applicant's detention conditions and because of his living conditions in Greece.

Lastly, under **Article 46** (binding force and execution of judgments) of the Convention, the Court held that it was ***incumbent on Greece***, without delay, to proceed with an examination of the merits of the applicant's asylum request that met the requirements of

[3] The "Dublin system" aims at determining which EU Member State is responsible for examining an asylum application lodged in one of the Member States by a third-country national. See also the factsheet on "'Dublin' cases".

the European Convention on Human Rights and, pending the outcome of that examination, to refrain from deporting the applicant.

Tarakhel v. Switzerland

Judgment (Grand Chamber) of 4 November 2014

The applicants were an Afghan couple and their five children. The Swiss authorities had rejected their application for asylum and ordered their deportation to Italy, where they had been registered in the "EURODAC system"[4] in July 2001. The applicants alleged in particular that if they were returned to Italy "in the absence of individual guarantees concerning their care", they would be subjected to inhuman and degrading treatment linked to the existence of "systemic deficiencies" in the reception arrangements for asylum seekers in Italy. They also submitted that the Swiss authorities had not given sufficient consideration to their personal circumstances and had not taken into account their situation as a family.

The Court held that there would be a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention if the Swiss authorities were to send the applicants back to Italy under the Dublin Regulation without having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together. The Court found in particular that, in view of the current situation regarding the reception system in Italy, and in the absence of detailed and reliable information concerning the specific facility of destination, the Swiss authorities did not possess sufficient assurances that, if returned to Italy, the applicants would be taken charge of in a manner adapted to the age of the children. The Court further considered that the applicants had had available to them an effective remedy in respect of their complaint under Article 3 of the Convention. Accordingly, it **rejected** their **complaint under Article 13** (right to an effective remedy) of the Convention **taken in conjunction with Article 3** as manifestly ill-founded.

A.M.E. v. the Netherlands (no. 51428/10)

Decision on the admissibility of 13 January 2015

The applicant, a Somali asylum seeker, complained that his removal to Italy would expose him to poor living conditions and he feared that the Italian authorities would expel him directly to Somalia without an adequate examination of his asylum case.

The Court declared the applicant's complaint under Article 3 (prohibition of inhuman or degrading treatment) of the Convention **inadmissible** (manifestly ill-founded), finding that he had not established that his future prospects, if returned to Italy, whether taken from a material, physical or psychological perspective, disclosed a sufficiently real and imminent risk of hardship severe enough to fall within the scope of Article 3. The Court noted in particular that unlike the applicants in the case of *Tarakhel v. Switzerland* (see above), who were a family with six minor children, the applicant was an able young man with no dependents and that the current situation in Italy for asylum seekers could in no way be compared to the situation in Greece at the time of the *M.S.S. v. Belgium and Greece* judgment (see above). The structure and overall situation of the reception arrangements in Italy could not therefore in themselves act as a bar to all removals of asylum seekers to that country.

M.T. c. Pays-Bas (n° 46595/19)

23 mars 2021 (décision sur la recevabilité)

This case concerned the transfer to Italy of an Eritrean asylum seeker and her two minor daughters pursuant to Dublin III Regulation. The applicant complained that family's transfer under the Dublin III Regulation, without individual guarantees from the Italian

[4] The "Eurodac system" enables EU countries to help identify asylum applicants and persons who have been apprehended in connection with an irregular crossing of an external border of the Union. By comparing fingerprints, EU countries can determine whether an asylum applicant or a foreign national found illegally present within an EU country has previously claimed asylum in another EU country or whether an asylum applicant entered the Union territory unlawfully.

authorities of adequate reception facilities and access to medical care, would breach Article 3 (prohibition of inhuman or degrading treatment) of the Convention.
The Court declared the application **inadmissible** as being manifestly ill-founded, finding that the applicant had not demonstrated that her future prospects, if transferred to Italy with her children, whether looked at from a material, physical or psychological perspective, disclosed a sufficiently real and imminent risk of hardship that was severe enough to fall within the scope of Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

Admissibility criteria (Article 35 of the Convention)

Litispendence

Karoussiotis v. Portugal

Judgment of 1 February 2011
This case raised among other things a new legal question concerning admissibility: did the fact that "infringement proceedings" against the respondent State had previously been introduced before the European Commission make the application to the European Court of Human Rights inadmissible as it had "already been submitted to another procedure of international investigation or settlement"?
In its judgment, the Court answered negatively and declared the application **admissible** However, it did **no**t find any **violation on the merits** of the application.

Non-exhaustion of domestic remedies

Laurus Invest Hungary Kft and Continental Holding Corporation and Others v. Hungary

Decision on the admissibility of 8 September 2015
This case concerned the removal of licences from companies involved in developing and operating entertainment arcades and other gaming arcades in Hungary following legislative changes. The companies complained, relying in particular on Article 1 (protection of property) of Protocol No. 1 to the Convention, that the removal of their licences amounted to an unjustified interference with their rights and that the absence of any legal avenues to challenge this measure gave rise to a further violation of the Convention.
The Court declared the application **inadmissible**, finding that the applicants had not exhausted the legal remedies at national level. It noted, in particular, that some of the applicant companies had brought an action in damages against the State – claiming compensation for the loss of business sustained on account of the legislation in question, allegedly in breach of EU law – which was pending. The Budapest High Court had indeed perceived a potential issue under the relevant law of the EU and had requested a preliminary ruling from the Court of Justice of the European Union (CJEU). The CJEU ruling in the applicants' case provided the Hungarian courts with guidance as to the criteria to be applied in the case pending before them, according to which justifications for the restrictions complained of also had to be interpreted in light of the general principles of EU law and in particular the fundamental rights guaranteed by the EU Charter of Fundamental Rights, including Article 17 (right to property). It followed that the litigation in progress before the national court ought to be capable of encompassing the applicants' complaints under Article 1 of Protocol 1. The Court therefore considered that the pending case before the national courts offered a reasonable prospect of success for the applicants to have their claims considered on the merits and to potentially receive damages. As regards the remaining applicants, the Court considered that they also had the possibility to file a similar claim.

Preliminary ruling

Ullens de Schooten and Rezabek v. Belgium

Judgment of 20 September 2011

This case concerned the refusal of the Belgian Court of Cassation and the *Conseil d'État* to refer questions relating to the interpretation of EU law to the Court of Justice of the European Union for a preliminary ruling.

In the light of the reasons given by those two courts and having regard to the proceedings as a whole, the Court held that there had been **no violation** of the applicants' right to a fair hearing under **Article 6 § 1** of the Convention.

See also: ***Vergauwen and Others v. Belgium***, decision on the admissibility of 10 April 2012.

Ramaer and van Willigen v. the Netherlands

Decision on the admissibility of 23 October 2012

This case concerned the effects of the changes in the Netherlands health insurance system introduced on 1 January 2006 on recipients of Netherlands pensions resident in European Union Member States other than the Netherlands, by virtue of Council of the European Communities Regulation (EEC) no. 1408/71. The applicants – Netherlands nationals in receipt of Netherlands old-age pensions and residing in Belgium and Spain respectively – complained in particular that they had lost their entitlements under their former health insurance contracts, and that they had had their entitlements reduced to basic public health care in their countries of residence. Further, they complained of the effects of the introduction of the Health Care Insurance Act on them as compared to Netherlands residents. Finally, they alleged that the Netherlands Central Appeals Tribunal, having requested for a preliminary ruling from the Court of Justice of the European Communities, to establish whether the Health Care Insurance Act was compatible with the European Community Treaty, in particular with European Union Council Regulation no. 1408/71, although not ruling out possible differences in treatment between Netherlands residents and non-residents, had nonetheless found that there had been no unjustified difference of treatment between residents and non-residents as regards the new health insurance system.

The Court declared the application **inadmissible**. It found in particular that the Central Appeals Tribunal, after unusually lengthy and complicated proceedings involving even a preliminary ruling of the Court of Justice of the European Union, had addressed the applicants' arguments in decisions which contained extensive reasoning on the pertinent European Union law, the drafting history of the Health Care Insurance Act and the history of the negotiations with the insurers, and had therefore not been arbitrary. The Court consequently rejected the applicants' complaint under Article 6 (right to a fair trial) of the Convention as manifestly ill-founded. The Court further declared inadmissible the applicants' complaints under Article 14 (prohibition of discrimination) of the Convention, Article 1 (protection of property) of Protocol No. 1 to the Convention, and Article 1 (general prohibition of discrimination) of Protocol No. 12 to the Convention.

Dhahbi v. Italy

Judgments of 8 April 2014

This case concerned the inability of an immigrant worker of Tunisian origin to obtain payment from the Italian public authorities of a family allowance under the association agreement between the European Union and Tunisia (Euro-Mediterranean Agreement). The applicant alleged that the Italian Court of Cassation had ignored his request to have a preliminary question referred to the Court of Justice of the European Union. He further submitted that he had been discriminated against on grounds of his nationality regarding an award of the allowance payable under a Law of 1998.

The Court held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention, noting that the Italian courts had failed to comply with their obligation to give reasons for refusing to submit a preliminary question to the Court of Justice

of the European Union (CJEU) in order to determine whether the Euro-Mediterranean Agreement allowed the authorities to refuse to pay the allowance in question to a Tunisian worker. The Court reiterated that from the angle of Article 6 of the Convention, national courts whose decisions were not open to appeal under domestic law were required to give reasons, based on the applicable law and the exceptions laid down in CJEU case-law, for their refusal to refer a preliminary question on the interpretation of EU law. They should set out their reasons for considering that the question was not relevant, that the provision had already been interpreted by the CJEU, or that the correct application of EU law was so obvious as to leave no scope for reasonable doubt.
The Court further held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention. It noted that the applicant's nationality had been the only criterion used to exclude him from entitlement to this allowance. Therefore, given that only very weighty considerations can justify a difference in treatment based exclusively on nationality and despite the budgetary reasons advanced by the Italian Government, the restrictions placed on the applicant had been disproportionate.

See also: ***Schipani and Others v. Italy***, judgment of 21 July 2015.

Baydar v. the Netherlands

Judgment of 24 April 2018

The applicant, who was convicted in 2011 of transporting heroin and of people trafficking, complained about the Supreme Court's refusal to refer his request for a preliminary ruling to the Court of Justice of the European Union (CJEU), and alleged that insufficient reasons had been given for that decision.
The Court held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention. It found in particular that in the context of accelerated procedures it was acceptable under Article 6 § 1 for an appeal in cassation which included a request for referral to be declared inadmissible or dismissed with a summary reasoning when it was clear from the circumstances of the case that the decision was not arbitrary or otherwise manifestly unreasonable.

Somorjai v. Hungary

Judgment of 28 August 2018

This case concerned the Hungarian Supreme Court's (*Kúria*) failure to give reasons for refusing a request for a reference for a preliminary ruling on a pension dispute to the Court of Justice of the European Union (CJEU) and the length of proceedings before domestic courts. The applicant complained in particular that the Hungarian authorities had not taken due account of the applicable EU law provisions which, in particular, placed an obligation on national courts of final instance to provide reasons for not referring a question to the CJEU for a preliminary ruling.
The Court declared the applicant's complaint regarding the alleged lack of adequate reasoning with respect to a potential reference for a preliminary ruling to the CJEU **inadmissible** as being manifestly ill-founded. It found in particular that the refusal to refer the case to the CJEU for a preliminary ruling or the lack of reasoning on that issue could not be seen as arbitrary. The applicant had not actually requested for such a reference to the CJEU in the relevant stage of the proceedings. Moreover, the domestic courts expressed their view that the Hungarian provisions and the EU law did not conflict. The Court held, however, that there had been a violation of Article 6 § 1 (right to a fair trial) of the Convention owing to the lengths of proceedings at issue which had been excessive.

Harisch v. Germany

Judgment of 11 April 2019

This case concerned civil proceedings, during which the applicant requested a referral to the Court of Justice of the European Union. The applicant complained about the German courts' refusal to refer questions to the Court of Justice for a preliminary ruling and of a failure to provide adequate reasoning for that refusal.

The Court held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention, finding in particular that the German courts' refusal of the referral, which had not appeared arbitrary, had had sufficient reasons.

Repcevirág Szövetkezet v. Hungary

Judgment of 30 April 2019

This case concerned the applicant company's complaint about the domestic courts failure, particularly that of the *Kúria* and the Constitutional Court, to refer questions to the Court of Justice of the European Union for a preliminary ruling.

The Court held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention, finding that the Hungarian courts' decisions had been neither arbitrary nor manifestly unreasonable. In particular, the *Kúria* had noted that the applicant company had not raised any issues of EU law in its first set of proceedings, and could not subsequently rely on such issues in a separate case for damages against the Supreme Court.

Sanofi Pasteur v. France

13 February 2020

This case concerned the liability of the applicant company to an individual, a trainee nurse who was vaccinated against hepatitis B and subsequently contracted various illnesses, and the court order against the applicant company to pay damages. The applicant company complained in particular about the fact that the French Court of Cassation had dismissed, without providing reasons, its request for preliminary rulings from the Court of Justice of the European Union concerning Article 4 of Directive 85/374, which lays down that the victim must prove the damage, the defect and the causal relationship between defect and damage.

The Court held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention, on account of the failure to provide reasons for the decision to refuse the applicant company's request that questions be referred to the Court of Justice of the European Union for a preliminary ruling. The Court reiterated in particular that the Convention did not guarantee, as such, any right to have a case referred by a domestic court to the Court of Justice for a preliminary ruling. However, Article 6 § 1 required the domestic courts to give reasons for any decision refusing to refer a question for a preliminary ruling, especially where the applicable law allowed for such a refusal only on an exceptional basis. The Court further emphasised that the circumstances of the case and what was at stake in the proceedings for the applicant company had required a particularly clear explanation for the decision not to refer that company's questions to the CJEU for a preliminary ruling.

See also, recently:

Quintanel v. France and 14 other applications

Decision (Committee) of 17 June 2021

Rutar and Rutar Marketing d.o.o. v. Slovenia

Judgment of 15 December 2022[5]

European arrest warrant

Pianese v. Italy and the Netherlands

Decision on the admissibility of 27 September 2011

The applicant is an Italian national who was detained under a European arrest warrant and complained that he had been arbitrarily deprived of his liberty and had not had any effective remedies in respect of his complaints under Article 5 (right to liberty and security) of the Convention.

[5]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

The Court declared the application **inadmissible**. It dismissed the applicant's complaints as being out of time and manifestly ill-founded, pursuant to Article 35 (admissibility criteria) of the Convention.

Pirozzi v. Belgium

Judgment of 17 April 2018

This case concerned the applicant's detention by the Belgian authorities and his surrender to the Italian authorities under a European arrest warrant with a view to enforcing a criminal conviction imposing 14 years' imprisonment for drug trafficking. The applicant alleged that his arrest by the Belgian authorities had been unlawful. He also considered that the Belgian authorities had surrendered him to the Italian authorities without reviewing the lawfulness and propriety of the European arrest warrant, although it had been based on a conviction resulting from a trial *in absentia*.

The Court held that there had been **no violation of Articles 5 § 1** (right to liberty and security) **and 6 § 1** (right to a fair trial) of the Convention. It found, in particular, that the applicant's arrest by the Belgian authorities with a view to placing him in detention and surrendering him to the Italian authorities had been carried out in accordance with lawful procedures. The Court also held that the Belgian courts' implementation of the European arrest warrant had not been manifestly deficient such that the presumption of equivalent protection was rebutted, and that the applicant's surrender to the Italian authorities could not be considered to have resulted from a trial amounting to a flagrant denial of justice.

Romeo Castaño v. Belgium

Judgment of 9 July 2019

In this case the applicants complained that their right to an effective investigation had been breached as a result of the Belgian authorities' refusal to execute the European arrest warrants issued by Spain in respect of N.J.E., the individual suspected of shooting their father, who was murdered in 1981 by a commando unit claiming to belong to the terrorist organisation ETA. The Belgian courts had held that N.J.E.'s extradition would infringe her fundamental rights under Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention under its procedural aspect (effective investigation). Observing, firstly, that a risk to the person whose surrender was requested of being subjected to inhuman or degrading treatment could constitute a legitimate ground for refusing to execute a European arrest warrant and thus for refusing the cooperation requested, it noted, however, that the finding that such a risk existed had to have a sufficient factual basis. In the present case, the Court found, in particular, that the scrutiny performed by the Belgian courts during the surrender proceedings had not been sufficiently thorough for it to find that the ground they relied on in refusing to surrender N.J.E., to the detriment of the applicants' rights, had had a sufficient factual basis. Among other things, the Belgian authorities had not sought to identify a real and individual risk of a violation of N.J.E.'s Convention rights or any structural shortcomings with regard to conditions of detention in Spain. However, the Court stressed that the finding of a violation did not necessarily imply that Belgium was required to surrender N.J.E. to the Spanish authorities. It was the lack of sufficient factual support for the refusal to surrender her that had led the Court to find a violation of Article 2 of the Convention. That in no way lessened the obligation for the Belgian authorities to verify that N.J.E. would not run a risk of treatment contrary to Article 3 of the Convention if she were surrendered to the Spanish authorities.

Bivolaru and Moldovan v. France

Judgment of 25 March 2021

This case concerned the applicants' surrender by France to the Romanian authorities under European arrest warrants for the purpose of execution of their prison sentences.

The applicants submitted that their surrender to the Romanian authorities under the European arrest warrants placed them at risk of treatment in breach of the Convention.
The Court held that the presumption of equivalent protection applied in the second applicant's case in so far as the two conditions for its application, namely the absence of any margin of manoeuvre on the part of the national authorities and the deployment of the full potential of the supervisory mechanism provided for by European Union law, were met. It therefore confined itself to ascertaining whether or not the protection of the rights guaranteed by the Convention had been manifestly deficient in the present case, such that this presumption was rebutted. To that end the Court sought to determine whether there had been a sufficiently solid factual basis requiring the executing judicial authority to find that execution of the European arrest warrant would entail a real and individual risk to the applicant of being subjected to treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) of the Convention on account of his conditions of detention in Romania. The Court noted that the second applicant had provided evidence of the alleged risk that was sufficiently substantiated to require the executing judicial authority to request additional information and assurances from the issuing State regarding his future conditions of detention in Romania. The Court found a **violation of Article 3** in so far as it appeared that the executing judicial authorities, in exercising their powers of discretion, had not drawn the proper inferences from the information obtained, although that information had provided a sufficiently solid factual basis for refusing execution of the European arrest warrant in question. In the first applicant's case the Court considered that, owing to its decision not to request a preliminary ruling from the Court of Justice of the European Union (CJEU) on the implications for the execution of an European arrest warrant of the granting of refugee status by a member State to a national of a third country which subsequently also became a member State, the Court of Cassation had ruled without the full potential of the relevant international machinery for supervising fundamental rights having been deployed. The presumption of equivalent protection was therefore not applicable. There were two aspects to the first applicant's complaint: the first concerning the implications of his refugee status, and the second concerning conditions of detention in Romania. There was nothing in the file before the executing judicial authority or the evidence adduced by the applicant before the Court to suggest that he would still face a risk of persecution on religious grounds in Romania in the event of his surrender. The Court considered that the executing judicial authority, following a full and in-depth examination of the applicant's individual situation which demonstrated that it had taken account of his refugee status, 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. The Court also considered that the description of conditions of detention in Romanian prisons provided by the applicant to the executing judicial authority in support of his request not to execute the European arrest warrant 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. In the Court's view, the executing judicial authority had not been obliged to request additional information from the Romanian authorities. Accordingly, it held that there had **not been** a solid factual basis for the executing judicial authority 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 those grounds.

Pending application

Alosa and Others v. Italy and Germany (no. 20004/18)

Application communicated to the Italian and German Governments on 3 November 2019
This case concerns the non-execution of a custodial sentence for manslaughter.
The Court gave notice of the application the Italian and German Governments and put questions to the parties under Article 2 (right to life) and Article 13 (right to an effective remedy) of the Convention.

Confidentiality of lawyer-client relations

Michaud v. France

Judgment of 6 December 2012

The case concerned the obligation on French lawyers to report their "suspicions" regarding possible money laundering activities by their clients. Among other things, the applicant submitted that this obligation, which resulted from the transposition of European directives, was in conflict with Article 8 (right to respect for private life) of the Convention, which protects the confidentiality of lawyer-client relations.

The Court held that it was required to rule on this question, since the "presumption of equivalent protection" was not applicable in this case. The Court further held that there had been **no violation of Article 8** (right to respect for private life) of the Convention in the present case. It stressed the importance of the confidentiality of lawyer-client relations and of legal professional privilege. It considered, however, that the obligation to report suspicions pursued the legitimate aim of prevention of disorder or crime, since it was intended to combat money laundering and related criminal offences, and that it was necessary in pursuit of that aim. On the latter point, it held that the obligation to report suspicions, as implemented in France, did not interfere disproportionately with legal professional privilege, since lawyers were not subject to the above requirement when defending litigants and the legislation had put in place a filter to protect professional privilege, thus ensuring that lawyers did not submit their reports directly to the authorities, but to the president of their Bar association.

Freedom of expression and electronic commerce

Delfi AS v. Estonia

Judgment (Grand Chamber) of 16 June 2015

This was the first case in which the Court had been called upon to examine a complaint about liability for user-generated comments on an Internet news portal. The domestic courts had rejected the portal's argument that, under EU Directive 2000/31/EC on Electronic Commerce, its role as an information society service provider or storage host was merely technical, passive and neutral, finding that the portal exercised control over the publication of comments.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the Estonian courts' finding of liability against the applicant company had been a justified and proportionate restriction on the portal's freedom of expression. The Grand Chamber reiterated in particular that it was for national courts to resolve issues of interpretation and application of domestic law. Thus it did not address the issue under EU law and limited itself to the question of whether the Supreme Court's application of the domestic law to the applicant company's situation had been foreseeable.

Environment

O'Sullivan McCarthy Mussel Development Ltd v. Ireland

Judgment of 7 June 2018

The applicant company fishes for immature mussels (mussel seed), and then cultivates and sells them when they are developed, a process which takes two years. The case concerned its complaint that the Irish Government had caused it financial losses by the way it had complied with European Union environmental legislation[6].

The Court held that there had been **no violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention. It observed in particular that that the protection of

[6] The Irish Government had temporarily prohibited mussel seed fishing in 2008 in the harbour where the company operated after the Court of Justice of the European Union found Ireland had failed to fulfil its obligations under two EU environmental directives. The company thus had no mature mussels to sell in 2010, causing a loss of profit.

the environment and compliance with the respondent State's obligations under EU law were both legitimate objectives. As a commercial operator the company should have been aware that the need to comply with EU rules was likely to impact its business. Overall, the Court thus found that the company had not suffered a disproportionate burden due to the Irish Government's actions and that Ireland had ensured a fair balance between the general interests of the community and the protection of individual rights. There had therefore been no violation of the company's property rights. The Court also held that there had been **no violation of Article 6** (right to a fair trial within a reasonable time) of the Convention in the present case.

Pop and Others v. Romania

2 April 2019 (decision on the admissibility)

The applicants, who had all three purchased second-hand vehicles within the European Union (EU), complained that they had been required to pay a pollution tax in order to register their vehicles in Romania, in application of an emergency ordinance (OUG no. 50/2008) which had been held to be incompatible with EU law by the Court of Justice of the European Union.

The Court declared the applications **inadmissible** for failure to exhaust domestic remedies. In the case of two applicants, it noted in particular that the remedy introduced by another emergency ordinance (OUG no. 52/2017), in force since 7 August 2017, afforded them an opportunity to obtain reimbursement of the pollution tax and payment of the corresponding interest. It also set out clear and foreseeable procedural rules, with binding time limits and the possibility of an effective judicial review. The remedy provided by OUG no. 52/2017 thus represented an effective remedy for the purposes of Article 35 (admissibility criteria) of the Convention. As to the third applicant, he had acknowledged that he had not taken any steps at national level to recover the interest he was claiming (the pollution tax and some of the interest had been refunded following a final ruling by a national court) and did not put forward any argument showing that such an approach would have been ineffective.

Right to interpretation and translation in criminal proceedings

Vizgirda v. Slovenia

Judgment of 28 August 2018

This case concerned the complaint of the applicant, whose native language was Lithuanian, that he had not had a fair trial after being charged with robbery because he had not understood the interpreting provided to him, which had been in Russian.

The Court held that there had been a **violation of Article 6 §§ 1 and 3** (right to a fair trial / right to be informed promptly of accusation/ right to an interpreter) of the Convention, finding that, overall, the language assistance the applicant had received had not allowed him to actively participate in his trial, which had therefore been unfair. In particular, the Court noted that the authorities were obliged to ascertain the applicant's competency in the Russian before making the decision to use it for the purpose of interpretation. It referred in this connection to the standards enshrined in the European Union's Directive 2010/64/concerning the right to interpretation.

Loan agreements and consumer protection

Antonopoulou v. Greece

19 January 2021 (decision on the admissibility)

The applicant had taken out a property loan in Swiss francs in order to take advantage of a favourable and stable exchange rate. A clause in the loan agreement stipulated that the loan was to be repaid on the basis of the exchange rate applicable on the date of repayment rather than the date on which the loan had been contracted. Having had to cease her occupation for health reasons, she sought to repay the loan but was unable to do so because the rise in the value of the Swiss franc against the euro had increased the

amount of the loan by approximately 60%. The applicant unsuccessfully brought proceedings in the domestic courts arguing that the clause in question had been unfair. She complained that she had had to repay to the bank an amount in euros that far exceeded the amount she had borrowed in Swiss francs.
The Court declared the application **inadmissible**, as being manifestly ill-founded, finding that the legal framework put in place by Greece had provided the applicant with a mechanism by which to assert her rights under Article 1 (protection of property) of Protocol No. 1 to the Convention. In particular, with regard to the effectiveness of the legal remedy which she had chosen, the Court noted that the applicant had been given the opportunity to set out all her arguments before the competent courts and to obtain a judgment, giving detailed reasons, by the Court of Cassation sitting as a full court. The Court of Cassation had, in addition, interpreted the domestic law in accordance with the relevant case-law of the Court of Justice of the European Union.

Common Fisheries Policy

Spasov v. Romania

6 December 2022[7]

This case concerned a Romanian court judgment convicting the applicant, the owner and captain of a Bulgarian-flagged vessel, of illegal fishing inside Romania's exclusive economic zone in the Black Sea. In the proceedings before the Romanian authorities, the applicant had argued that the quantity of fish in question was part of Bulgaria's catch quota for turbot under the European Union (EU) Common Fisheries Policy. However, the Constanța Court of Appeal took the view that EU law was not applicable and convicted the applicant under domestic law.
The Court held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention and a **violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention in the present case. It pointed out, in particular, that according to the principle of the primacy of EU law, a Regulation with direct effect took precedence over any conflicting domestic law. The Court noted in the present case that the European Commission had clearly indicated to the Romanian authorities that the proceedings against the applicant were contrary to EU law, and in particular Regulation (EC) No. 2371/2002 and Regulation (EU) No. 1256/2010. In the light of the provisions of Regulation (EC) No. 2371/2002 and the very clear opinion of the European Commission regarding the application of the Common Fisheries Policy rules, the Court held that, in convicting the applicant, the Court of Appeal had committed a manifest error of law and that the applicant had been the victim of a "denial of justice". In the event of doubt the Court of Appeal could have requested a ruling from the Court of Justice of the European Union as to the interpretation of the rules of EU law. The Court also found that the domestic provisions on which the Court of Appeal had based its decision (OUG no. 23/2008) could not serve as a legal basis for the additional pecuniary penalties imposed on the applicant, as he had been entitled under clear European rules to fish in the zone concerned.

Media Contact:
Tel.: +33 (0)3 90 21 42 08

[7]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.