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This factsheet does not bind the Court and is not exhaustive

Case-law concerning the European Union

The [European Union](#) (the EU) is not currently a Party to the European Convention on Human Rights (the Convention). 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 Rights¹.

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 Commission 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" (no. 235/56, Commission decision 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 Convention, whose guarantees affected "the public order of Europe" (no. 788/60, Austria v. Italy, decision 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 \(application no. 8030/77\)](#)

10.07.1978 (decision)

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).

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.

¹ Between 1954 and 1999 the Commission, together with the Court and the Committee of Ministers of the Council of Europe, supervised Contracting States' compliance with their Convention obligations.

Possibility of bringing a case against a State for national measures giving effect to Community law (State had a wide margin of appreciation)

Etienne Tête v. France (no. 11123/84)

09.12.1987 (decision)

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 as manifestly ill-founded.

Possibility in principle of bringing a case against a State for national measures giving effect to Community law (where the State had no margin of appreciation), but a 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 (no. 13258/87)

09.01.1990 (decision)

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. It considered that several of its rights had been breached, including the right to be presumed innocent.

The Commission 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 Convention. The Commission also took into consideration the fact that it would be contrary to the very idea of transferring powers to an international organisation to hold the member States responsible for examining in each individual case, before issuing a writ of execution for a judgment of the European Court of Justice, whether the right to a fair hearing within the Convention meaning had been respected in the underlying proceedings.

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 (where the State had a wide margin of appreciation)

Cantoni v. France (no. 17862/91)

15.11.1996 (judgment)

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 Court's view, the last-mentioned fact "[did] not remove [the impugned provision] from the ambit of Article 7 of the Convention" (no punishment without law). 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.

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

Matthews v. the United Kingdom (no. 24833/94)

18.02.1999 (judgment)

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 Convention 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 – 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 the right to free elections.

The protection of fundamental rights provided by Community law held to be equivalent to that provided by the Convention system

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

30.06.2005 (judgment)

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". 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." 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".

European arrest warrant

Pietro Pianese v. Italy and the Netherlands (no. 14929/08)

27.09.2011 (decision - French only)

The applicant contests the lawfulness of his arrest under a European arrest warrant. The applicant challenged the lawfulness of his detention under a European arrest warrant.

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).

Applying its admissibility criteria (Article 35), the Court dismissed the applicant's complaints as being out of time and manifestly ill-founded.

Selected recent judgments

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

21.01.2011 (judgment)

The applicant is an Afghan national who entered the EU through Greece before arriving in Belgium, where he applied for asylum. The Belgian authorities requested the Greek authorities to take charge of the asylum application (under "the Dublin system", aimed at determining which Member State is responsible for examining an asylum application lodged in the territory of one of the Member States of the EU by a third-country national). The applicant alleged, in particular, that he was at risk of ill-treatment or even of a breach of his right to life.

In its Grand Chamber judgment, the Court found that the Belgian authorities should not have expelled asylum seeker to Greece, and held that there had been violations of the Convention both by Greece and Belgium.

Numerous similar cases are currently pending before the Court. See also the theme file "Dublin cases" [available here](#).

Karoussiotis v. Portugal (no. 23205/08)

01.02.2011

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 Court inadmissible as it had "already been submitted to another procedure of international investigation or settlement"? (Article 35 of the Convention, admissibility criteria)

In its judgment, the Court answered negatively and declared the application admissible (however it did not find any violation on the merits).

Ullens de Schooten and Rezabek v. Belgium (no. 3989/07 and 38353/07)

20.09.2011

The case concerned the refusal of the Belgian Court of Cassation and the Conseil d'Etat to refer questions relating to the interpretation of European Union (EU) law to the Court of Justice for a preliminary ruling. In its judgment the Court found that, the Conseil d'Etat, like the Court of Cassation, had given reasons for its refusal.

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.

European Union accession to the European Convention on Human Rights

The [Lisbon Treaty](#) provides for the [accession](#) of the European Union (EU) to the European Convention on Human Rights (the Convention). [Protocol No. 14](#) to the Convention also provides for accession.

[Official talks](#) between the European Commission and the Council of Europe on accession began on 7 July 2010.

Recent developments (end 2011): the CDDH (Steering Committee for Human Rights of the Council of Europe's Committee of Ministers) has transmitted to the Committee of Ministers the draft legal instruments for the accession, with further negotiations ongoing.

After the Parliamentary Assembly of the Council of Europe as well as the two European Courts will all have given their opinion on the final draft instruments, they require the adoption by the Committee of Ministers. The EU will accede to the ECHR once the accession agreement has entered into force, which requires the ratification by all states parties to the ECHR as well as the EU itself.

A [thematic file on the EU accession to the European Convention on Human Rights](#) is available on the Council of Europe's website.

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