



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

## Seminar

### **“The articulation between the European Convention of Human Rights and the European Law: past, present and future”**

#### **Opening words by Síofra O’Leary**

President of the European Court of Human Rights

Strasbourg, 14 June 2024

Deputy Secretary General,  
Ambassador Krivas,  
Judges,  
Distinguished speakers, colleagues and friends,

The modest but important reason for today’s seminar is to bring together voices from different fields - European and national judiciaries, EU institutions and academia - to bridge what I think can still be regarded as a gap in European law.

It is striking in 2024 how expertise in relation to Convention and EU law still remains surprisingly fragmented.

We see this in academia – although some brilliant exceptions are present here today – and we see it at times in how cases are pleaded before the Court in Strasbourg.

In many States, different ministries – Justice or Foreign Affairs – take charge of legal proceedings before the two European courts. In their pleadings, even in fields such as immigration and asylum, which for 27 Council of Europe States is now highly regulated at EU level, representatives may present the national law relevant to their complaint without explaining the broader EU law system of which that national law forms a part.<sup>1</sup>

Despite EU law forming part of national law, generally and for the purposes of the examination by the Strasbourg court of an individual application, one still sees parties omit any or detailed reference to the relevant provisions of EU law; which law respondent States have transposed into national law and which their national courts, whose decisions are primarily under scrutiny in Strasbourg, have in turn sought to apply.

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<sup>1</sup> See, for example, the dissent in ECtHR, *A.M. v. France*, no. 56324/13, 12 July 2016, § 4.

When discussing the relationship between the Convention and EU law, one must not forget the key features that distinguish the two systems, or the two courts charged with the interpretation and application of the corresponding texts.

The mission of the Strasbourg court is to establish a minimum standard for human rights protection across the 46 heterogeneous member States of the Council of Europe.

The mission of the CJEU, on the other hand, is broader in that it seeks to ensure the uniform interpretation of EU law generally. To date, its jurisdiction in relation to fundamental rights has been limited by the scope of application of EU law and by the all-important principle of conferral.

In Strasbourg, we exercise an external and subsidiary review of whether Member States have complied with their Convention obligations, in a system which is based on shared responsibility. However, the Convention is also, in the words of the Strasbourg court, “a constitutional instrument of European public order in the field of human rights”.<sup>2</sup>

Ours is a rights-based court whose sole task is to interpret the Convention, such that the subsidiary nature of our review – or the different ways in which the Convention is incorporated at national level – should not distract observers from the Convention’s broader scope and depth.

As Judge Guyomar will explore, there is very much more that unites the two systems than divides them.

While twenty-seven of the States Parties to the Convention are also EU member States, as long as the EU is not a Party itself, the standards and measures adopted by its institutions cannot be challenged per se before the Court (think, over 45 years ago, *Confédération française démocratique du travail* and the case-law since then).<sup>3</sup>

As per the CJEU in *Kamberaj* and subsequent rulings, Article 6 § 3 TEU – which refers to both the Convention and the common constitutional traditions of Member States – does not govern the relationship between the ECHR and the legal systems of EU Member States. The latter, as we will hear today, have to navigate a multi-level system whose contours change sometimes rapidly – see the use of Articles 2 and 19 TEU in rule of law cases in Luxembourg – or slowly over time.

Moreover, as the EU has not acceded to the ECHR, the latter does not constitute a legal instrument which has been formally incorporated into the legal order of the EU.<sup>4</sup>

I could add, as regards accession – yet – but I won’t because, firstly, this seminar is not only or principally about accession (although Professor Sarmiento will broach that subject). Secondly, accession remains the subject of political negotiations and possible legal developments at EU level. It doesn’t fall to me to precipitate or comment on either.

Our focus today is broader than possible accession and more immediately important – the articulation between Convention and EU law as things stand and going forward.

A lot of water has passed under the relevant legal bridges linking the two systems since the CFDT decision I just mentioned:

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<sup>2</sup> See ECtHR, *Bosphorus Hava Yollari Turizim ve Ticaret AS v. Ireland* [GC], no. 45036/98, 30 June 2005, § 156, citing ECtHR, *Loizidou v. Turkey* (preliminary objections), judgment of 23 March 1995, Series A no. 310, pp. 27-28, § 75.

<sup>3</sup> ECmHR, *Confédération française démocratique du travail v. the European Communities*, no. 8030/77, 10 July 1978; ECmHR, *M. & Co. v. the Federal Republic of Germany*, no. 13258/87, 9 January 1990; ECtHR, *Matthews v. the United Kingdom* [GC], no. 24833/94, 18 February 1999, § 32.

<sup>4</sup> CJEU, *Kamberaj*, 24 April 2012, C-571/10, EU:C:2012:233, §§ 60 and 62, and CJEU [GC], *Åkerberg Fransson*, 26 February 2013, C-616/10, EU:C:2013:105, § 44.

- identification by the CJEU of the ECHR as the cornerstone of its general principles jurisprudence,
- the design and application of the *Bosphorus* presumption,
- successive and extensive expansion of EU competences into fields where human rights issues naturally arise,
- the recognition of the equal legal value of the EU Charter and the deliberate incorporation of the Convention into the DNA of that Charter,
- a decrease, following the Treaty of Lisbon, and subsequent healthy increase in CJEU references to relevant ECtHR case-law and, increasingly,
- the codification of Convention rights and freedoms in secondary EU legislation.

Our speakers today will help us navigate and reflect upon these changes. I hope that they will also ask us to recognise the important challenge – and I would say duty – which both European courts face and bear, namely to ensure respect for the principles of democracy, human rights and the rule of law on which both organisations were and are based. Now more than ever, both must assist national courts to help them sustain those principles via a coherent and effective multi-level system of protection.

As you know, the Court devotes a considerable amount of its limited resources to knowledge-sharing, externalising its excellent platform in 2022.

Today, we launch a new “ECHR/EU” page on the Knowledge-Sharing platform; a platform which provides Convention case-law analysis Article by Article, theme by theme, updated on a weekly basis.

The new KS page will over time include a series of factsheets, jointly produced by the Court and the Fundamental Rights Agency of the European Union (FRA), bringing together case-law from both the Strasbourg Court and the CJEU. The first factsheet will soon be published, dedicated to the European Arrest Warrant.

In parallel, following exchanges which I undertook earlier this year with the Director General of the EU Commission Legal Service, Daniel Calleja Crespo, the Court will soon start cooperation with the Legal Service in the form of regular exchanges aimed at improving knowledge of EU law at the level of the Court’s Registry and enhancing EU Commission knowledge of Convention law.

I thank the Director General and his team for having engaged with us so constructively and hope that this pilot cooperation will bear fruit on both sides.

This new initiative complements the recent decision by the Court to recruit more Registry lawyers with an EU law profile.

These small but important steps seek to contribute to the coherent and effective protection I just referred to.

Without further ado, I thank our distinguished guests for taking the time to join us in Strasbourg and pass the floor to the Deputy Secretary General and then the Ambassador of Lithuania, which State currently holds the Presidency of the Committee of Ministers. I’d like to thank the Ambassador and Permanent Representation for their generous contribution to the organisation of this seminar. This has allowed us to livestream it to a wider audience, including the member Courts and observer Courts of the Superior Court Network, the EU Fundamental Rights Agency, the Council of Europe’s HELP programme and the CDDH.