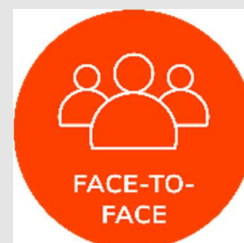




The Scope and Application of the EU Charter of Fundamental Rights Training for Defence Lawyers

Riga, 5-6 June 2025



EXCELLENCE IN
EUROPEAN LAW⁷

Speakers

Ciprian Băban, Defence Lawyer, Bucharest

Mielle Bulterman, Head EU Law Division, Ministry of Foreign Affairs, The Hague

Alba Hernandez Weiss, Defence Lawyer, Associate, Oehmichen International, Berlin

Ieva Miļūna, Lecturer in International Law, Riga Graduate School of Law, Riga

Maarja Pild-Freiberg, Attorney at Law, TRINITY Law Firm, visiting Lecturer, University of Tartu

Marie Poirot, Attorney-at-Law, BONIFASSI Avocats, Paris

Key topics

- The system of fundamental rights protection in Europe
- Scope of application and interpretation of the EU Charter
- Relationship with the ECHR
- Rights to an effective remedy and fair trial
- Presumption of innocence and right of defence
- Principles of legality and proportionality of criminal offences and penalties
- Ne bis in idem
- Right to privacy: EncroChat and other cases

Language
English

Event number
325DT17

Organisers
ERA (Cornelia Riehle) in cooperation
with the Latvian Council of Sworn
Advocates



The Scope and Application of the EU Charter of Fundamental Rights

Thursday, 5 June 2025

09:00 Arrival and registration of participants

09:15 **Welcome and introduction to the programme**
Representative of Latvian Council of Sworn Advocates & Cornelia Riehle (ERA)

PART I: The Charter

Chair: Cornelia Riehle

09:20 **Protecting fundamental rights in the EU: an overview**

- General principles of EU law
- The EU Charter and its legal value
- Rights and principles in the EU Charter
- The interpretation and application of the Charter
- Relation to the ECHR

Ieva Mijūna

10:45 Coffee break

11:15 **The relevance of the EU Charter for criminal lawyers**

- Rights to an effective remedy and fair trial
- Presumption of innocence and right of defence
- Principles of legality and proportionality of criminal offences and penalties
- Ne bis in idem

Alba Hernandez Weiss

PART II: Recent cases of the CJEU in criminal matters

Chair: Cornelia Riehle

11:45 **The right to an effective remedy and to a fair trial - Article 47 EU Charter**

- CJEU case law development
- Art. 47 practical application
- Relationship with Arts. 41 and 48
- Relation to ECHR

Mielle Bulterman

12:15 **Restrictions on Article 47 EU Charter**

- Evidence barriers, court fees, limitation periods

Mielle Bulterman

12:35 Discussion

12:45 Lunch

Chair: Cornelia Riehle

14:00 **The right not to be tried or punished twice in criminal proceedings for the same criminal offence - Article 50 EU Charter**

- Interpreting case law: From Åkerberg Fransson until today
- Relation to ECHR

Ciprian Băban

15:00 Discussion

15:15 Coffee break

15:45 **Presumption of innocence and the right to defence - Article 48 EU Charter**

- Right to be advised, defended and represented
- Right to remain silent and to avoid self-incrimination
- Right to access to court

Objective

This seminar will provide an opportunity for defence lawyers to improve and update their knowledge of the EU Charter of Fundamental Rights. It will provide participants with a sound knowledge of the scope and interpretation of the EU Charter and its practical implications, in particular with regard to the right to an effective remedy and a fair trial, the presumption of innocence and the right of defence, the principles of legality and proportionality of criminal offences and penalties, and ne bis in idem. Participants will have the opportunity to meet and network with colleagues from across the EU.

About the Project

Training defence lawyers with special regard to European criminal law have gained more and more importance in recent years. Hence, this seminar is part of a large-scale project co-financed by the European Commission entitled "European Criminal Law for Defence Lawyers". Fifteen interactive, practice-oriented activities will be implemented within this project ranging from face-to-face seminars and conferences to webinars and eLearning courses. For more information, see: <https://training-for-defence.era.int/>

Who should attend?

Defence lawyers, who are citizens of eligible EU Member States participating in the EU Justice Programme (Denmark does not participate), Albania, Bosnia and Herzegovina, Kosovo* and Ukraine.

* This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ opinion on the Kosovo declaration of independence.

Venue

European Union Representative Office in Riga
Aspazijas bulvaris 28
1050 Riga
Latvia

- Relation to ECHR
Alba Hernandez Weiss

- 16:30 Discussion
- 16:45 End of first day
- 19:30 Dinner offered by the organisers

Friday, 6 June 2025

PART II – Continued: Recent cases of the CJEU in criminal matters

Chair: Cornelia Riehle

- 09:15 **Principles of legality and proportionality of criminal offences and penalties - Article 49 EU Charter**
Ciprian Băban
- 10:00 **The right to privacy from the perspective of EncroChat, SkyECC and ANOM**
Marie Poirot
- 10:30 Discussion
- 10:45 Coffee break
- 11:15 **Procedural aspects of bringing the case to the Court of Justice: Preliminary reference procedures**
Maarja Pild
- 12:45 Discussion
- 13:00 Closing
Cornelia Riehle
- 13:05 End of seminar

For programme updates: www.era.int
Programme may be subject to amendment.



Times indicated are EEST
(Eastern European Summer Time)

CPD

ERA's programmes meet the standard requirements for recognition as Continuing Professional Development (CPD). Participation in the full programme of this event corresponds to **8 CPD hours**. A certificate of participation for CPD purposes with indication of the number of training hours completed will be issued on request. CPD certificates must be requested at the latest 14 days after the event.

Your contacts



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Save the date

Annual Conference on White-Collar Crime in the EU 2025
Trier & online, 20-21 March 2025

Annual Conference on EU Border Management 2025
Trier & online, 10-11 April 2025

Summer Course on European Criminal Justice
Online, 23-27 June 2025

Apply online for "The Scope and Application of the EU Charter of Fundamental Rights":
www.era.int/?133563&en



Co-funded by the European Union.

The content of this programme reflects only ERA's view and the Commission is not responsible for any use that may be made of the information it contains.

Application

The Scope and Application of the EU Charter of Fundamental Rights
Riga, 5-6 June 2025 / Event number: 325DT17



Terms and conditions of participation

Selection

1. Participation is only open to lawyers in private practice from eligible EU Member States (Denmark does not participate in this EU Justice Programme), Albania, Bosnia and Herzegovina, Kosovo* and Ukraine.

The number of open places available is limited (10 places). Participation will be subject to a selection procedure. Selection will be according to professional eligibility, nationality and then "first come, first served".

Interested defence lawyers from Croatia should apply via the Croatian Bar Association.
Interested defence lawyers from Hungary should apply via the Budapest Bar Association.
Interested defence lawyers from Latvia should apply via the Latvian Council of Sworn Advocates.
Interested defence lawyers from Lithuania should apply via the Lithuanian Bar Association.
Interested defence lawyers from Portugal should apply via the Portuguese Bar Association.
Interested defence lawyers from Spain should apply via ICAB.

2. Applications should be submitted before **28 March 2024**.
3. A response will be sent to every applicant after this deadline. **We advise you not to book any travel or hotel before you receive our confirmation.**

Registration Fee

4. €110 including documentation, coffee breaks, lunch and dinner.

is designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

Apply online for "The Scope and Application of the EU Charter of Fundamental Rights":
www.era.int/?133563&en

Venue

European Union Representative
Office in Riga
Aspazijas bulvaris 28
1050 Riga
Latvia

Language

English

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The Scope and Application of the EU Charter of Fundamental Rights

Training for Defence Lawyers

Riga, 5-6 June April 2025



Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or ERA. Neither the European Union nor the granting authority can be held responsible for them.

I. Background Documentation

A. General (EU)

a) Legislation of the European Union

1.	Consolidated version of the Treaty on the European Union
2.	Consolidated version of the treaty on the functioning of the European Union
3.	Consolidated version of the Statute of the Court of Justice of the European Union
4.	Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union
5.	Charter of Fundamental Rights of the European Union
6.	Explanatory memorandum to the Charter of Fundamental Rights

b) European Union on AI and e-evidence

7.	The European AI ACT Regulation (EU) 2024/1689 of the European Parliament and of the Council 13 June 2024 laying down harmonised rules in artificial intelligence and
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	amending Regulations (EC) No 300/2008, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)
8.	Council Decision (EU) 2023/436 of 14 February 2023 authorising Member States to ratify, in the interest of the European Union, the Second Additional Protocol to the Convention on Cybercrime on enhanced cooperation and disclosure of electronic evidence (ST/6438/2022/INIT, IÖJ L 63, 28.2.2023)
9.	Regulation (EU) 2023/1543 of the European Parliament and of the Council of 12 July 2023 on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings (PE/4/2023/REV/1, OJ L 191, 28.7.2023, p. 118–180)
10.	Directive (EU) 2023/1544 of the European Parliament and of the Council of 12 July 2023 laying down harmonised rules on the designation of designated establishments and the appointment of legal representatives for the purpose of gathering electronic evidence in criminal proceedings (PE/3/2023/REV/1, OJ L 191, 28.7.2023, p. 181–190)

c) The relevance of the EU Charter for criminal lawyers

1) Case law

11.	Joined Cases C-339/20 and C-397/20, VD, Judgment of the Court (Grand Chamber), 20 September 2022
12.	Case C-140/20, G.D. v The Commissioner of the Garda Síochána and Others, Judgment of the Court (Grand Chamber), 5 April 2022
13.	Case C-282/20, Criminal proceedings against ZX, Judgment, 21 October 2021
14.	Case C-906/19, Criminal proceedings against FO, Judgment, 9 September 2021
15.	Joined Cases C-511/18, C-512/18 and C-520/18, La Quadrature du Net and Others v Premier ministre and Others, Judgment of the Court (Grand Chamber), 6 October 2020
16.	Case C-551/18, IK, Judgment, 6 December 2018
17.	Case C-310/18, Criminal proceedings against Emil Milev, Judgment, 19 September 2018
18.	Case C-115/17, Administration des douanes et droits indirects and Etablissement national des produits de l'agriculture et de la mer, Judgment, 7 August 2018
19.	Joined Cases C-217/15 and C-350/15, Criminal proceedings against Massimo Orsi and Luciano Baldetti, Judgment, 5 April 2017

2) Decisions/Directives

20.	Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings
21.	Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings

22.	Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax
23.	2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision

B. General (ECHR)

a) Legislation of the ECHR

24.	Draft Council of Europe Convention for the Protection of the Profession of Lawyer, European Committee on Legal Co-operation 11 December 2024
25.	Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law 5 September 2024
26.	European Convention on Human Rights
27.	Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 15 as from its entry force on 1 August 2021

b) Reports/Factsheets/Information notes

28.	A European Convention on the protection of the protection of lawyers: A small step for the legal profession, a giant leap for the rule of law
29.	Guide to the Case-Law of the of the European Court of Human Rights, Data protection, Updated on 29 February 2024
30.	Selected case-law of the European Court of Human Rights: Application of the principle of legality, right to a fair trial and other protected rights in core international crimes cases (2024).

c) Case law of the ECtHR

31.	Case of Grezda v. Poland (Application no. 43572/18) Judgement 15 March 2022
32.	Case of Reczowicz v Poland (Application no. 43447/19) 22 July 2021
33.	Case of Xero Flor w Polsce sp. Z o.o. v. Poland (Application no. 4907/18) Judgement 7 May 2021
34.	Case of Bilgen v. Turkey (Application no. 1571/07) Judgement 9 March 2021
35.	Case of Pasquini v. San Marino (Application no. 50956/16) Judgement 2 May 2019
36.	Beuze v. Belgium (Application no. 71409/10) Judgement 9 November 2018
37.	Case of Chim and Przywieczerski v. Poland (Application nos. 36661/07 and 38433/07) Judgement 12 April 2018

38.	Case of Haarde v. Iceland (Application no. 66847/12) Judgement 23 November 2017
39.	Case of Simeonovi v. Bulgaria (Application no. 21980/04) Judgement 12 May 2017



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GRADUATE
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LAW

The system of fundamental rights protection in Europe

Ieva Miļūna, Ph.D.cand., Lecturer

Lecture – 5 June 2025

Plan for the lecture

- I General principles of EU legal acts
- II EU Charter and its legal value
- III Scope of application and interpretation of the EU Charter
- IV Rights and principles within the EU Charter
- V Cases regarding the EU Charter
- VI Relation to European Convention on Human Rights - Jurisdiction

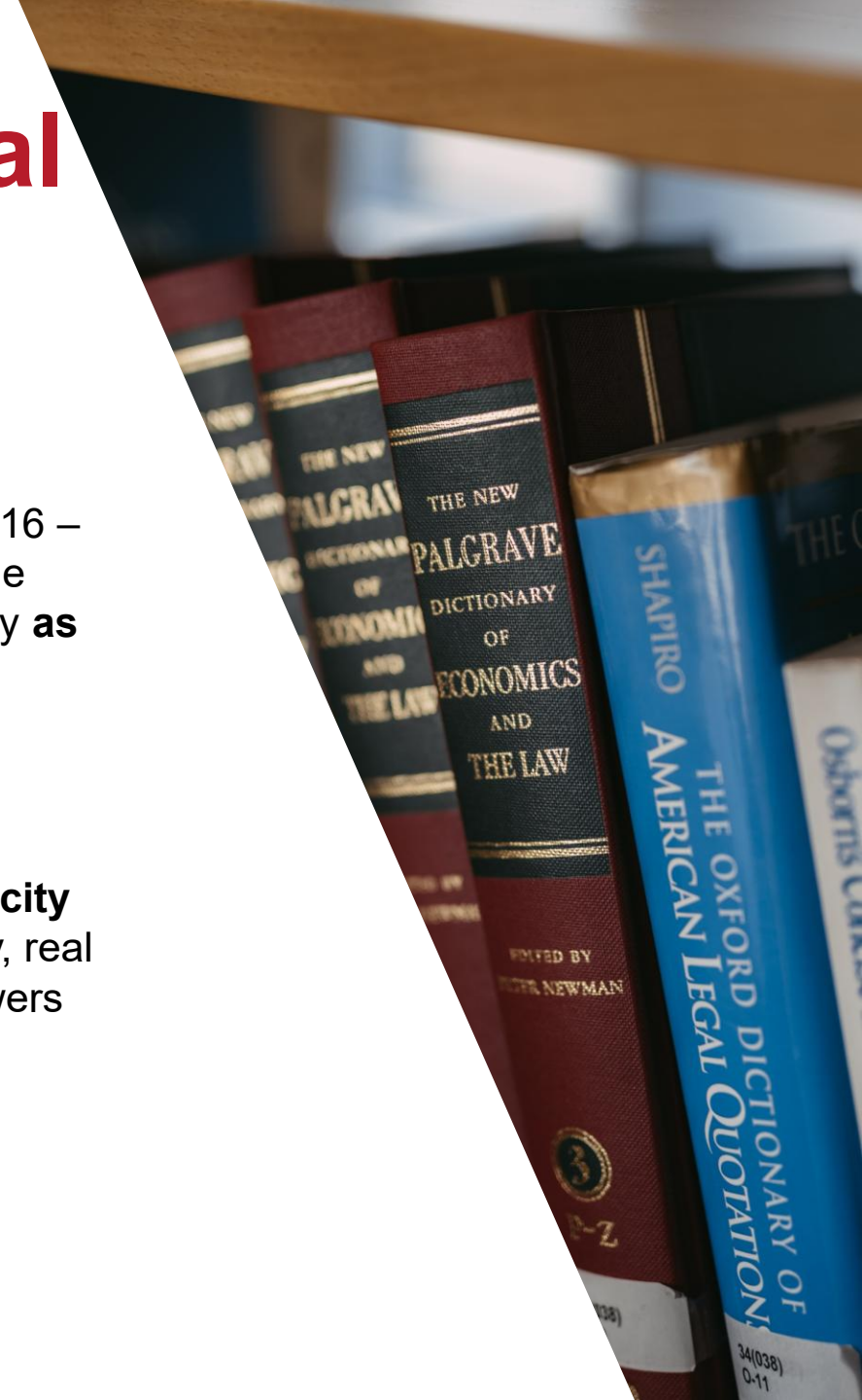


I General principles of EU legal acts

- Preamble of the Treaty on the Functioning of the EU (TFEU):
 - Calls for unity among European nations
 - To succeed the goals of fundamental human rights such as liberty and democracy
 - Social, political, economic, and security goals of the EU
- Article 2 of the Treaty on the European Union:
 - ‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail’.
 - Common legal order – «EU identity»
 - General principles of EU law – for review of EU law and in case of fundamental rights – to be relied on by individuals

I General principles of EU legal acts

- General principles of the EU legal acts:
 - **Autonomous legal order**
 - Joined Cases C-402/05 P & C-415/05 P, *Kadi*, paragraphs 282 and 316 – fundamental rights review is ‘expression, in a community based on the rule of law, of a constitutional guarantee stemming from the EC Treaty **as an autonomous legal system**’. (Human rights guarantees).
 - *Van Gend* and *Costa/ENEL*, the EU became ‘**a new legal order of international law**’
 - *Costa/ENEL*: ‘a Community of unlimited duration, having **its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane** and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the states to the community’
 - Independence of EU from Member States
 - Independence from the *modus operandi* of international law
 - Independence of EU institutions from MS influence



I General principles of EU legal acts

- General principles of the EU legal acts:
 - **Supremacy and direct effect**
 - Case 106/77, *Simmenthal II*, paragraph 17: ‘In accordance with the principle of the precedence of Community law’, Treaty provisions and **directly applicable secondary law** ‘by their entry into force render automatically inapplicable any conflicting provision of ... national law’.
 - *Van Gend*: a **provision of primary law may be directly effective** if it contains a **clear and unconditional prohibition** and is not qualified by any reservation on the part of MS, which would make its implementation conditional upon a positive MS measure.
 - Case C-399/11, *Melloni*, para 59: The principle of the primacy of EU law ‘establishes the pre-eminence of EU law over the law of the Member States’, requiring all MS bodies to give full effect to the various EU provisions
 - Case 106/77, *Simmenthal II*, paras 18, 20, 22, and 23: the Court refers to Union law’s ‘effectiveness’.
 - Need for uniform application of EU law throughout the Union
 - No strict hierarchy between EU law and national law.

I General principles of EU legal acts

- General principles of the EU legal acts:
 - **Effectiveness:**
 - Supremacy is linked to effectiveness in *Simmenthal II* and in *Factortame*
 - Effectiveness is the **necessary complement to direct effect and supremacy**
 - Individuals can rely upon effectiveness in the national legal order
 - National law should be interpreted in conformity with the EU law
 - **Openness:**
 - Institutional transparency and access to documents



II EU Charter and its legal value

- Preamble of the EU Charter:
 - Ever closer union
 - Peaceful future based on common values
 - ‘Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law.’
 - Individual is at the heart of EU’s activities (citizenship of the EU; area of freedom, security and justice)
 - Diversity of the cultures and traditions of the peoples of Europe
 - Balanced and sustainable development; free movement of persons, services, goods and capital, and the freedom of establishment.
 - ‘to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments’
 - Principle of subsidiarity – rights result from constitutional traditions and international obligations common to the Member States
 - Charter is interpreted by the Courts of the EU and Member States

III Scope of application and interpretation of the EU Charter

- Art. 51 – Field of application
 - Provisions of the Charter are addressed to the institutions, bodies, offices and agencies of the EU with due regard for the principle of subsidiarity and **to the Member States only when they are implementing EU law**
 - They shall apply the Charter in accordance with **their respective powers** and respecting the limits of the powers of the EU as conferred on it in the Treaties.
 - Case C-414/16, *Egenberger*, paragraphs 75–82 and Joined Cases C-569–570/16, *Bauer et al*, paragraphs 85–92 – fundamental rights can be invoked directly against private parties in proceedings before national courts.



III Scope of application and interpretation of the EU Charter

- Art. 51 – Field of application:
 - ‘Charter has neither transformed the EU into a human rights organization nor the ECJ into a human rights court’- Koen Lenaerts
 - Charter is first and foremost the Union’s domestic fundamental rights’ instrument; its binding character in the MS is only of secondary importance
 - MS are bound to comply with these rights when acting within the scope of EU law
 - When applying EU rules (ECJ made it clear that there are no areas of EU law to which the Charter cannot apply)
 - Charter **does not apply** to MS activities expressly excluded from the scope of EU law
 - There can be discretion as to *whether* a MS wishes to act at all
 - National legislation may pursue the same objectives as the EU law



III Scope of application and interpretation of the EU Charter

- Art. 51 – Field of application:
 - Charter applies in cases of **derogations** from free movement law (in cases when national legislation excludes certain EU citizens from eligibility to social assistance granted to nationals)
 - Case C-390/12, *Pfleger*: The ECJ has confirmed that the Charter applies in derogation situations
 - Charter is applicable where MS relies on **overriding (mandatory) requirements** in order to justify national rules obstructing free movement
 - **MS courts** are bound to comply with the **procedural rights** in the Charter where they are dealing with EU law remedies, e.g. EU state liability claims

III Scope of application and interpretation of the EU Charter

- Art. 51 – Field of application:
 - *Kücükdeveci* where the factual situation—dismissal of an employee—was held to fall within the scope of EU law. Directive 2000/78 stipulates that dismissals must not be discriminatory on the basis of age. Charter was used to disapply national legislation that was discriminatory on the basis of age.
 - **Overlap of subject-matter** between national rules and EU rules

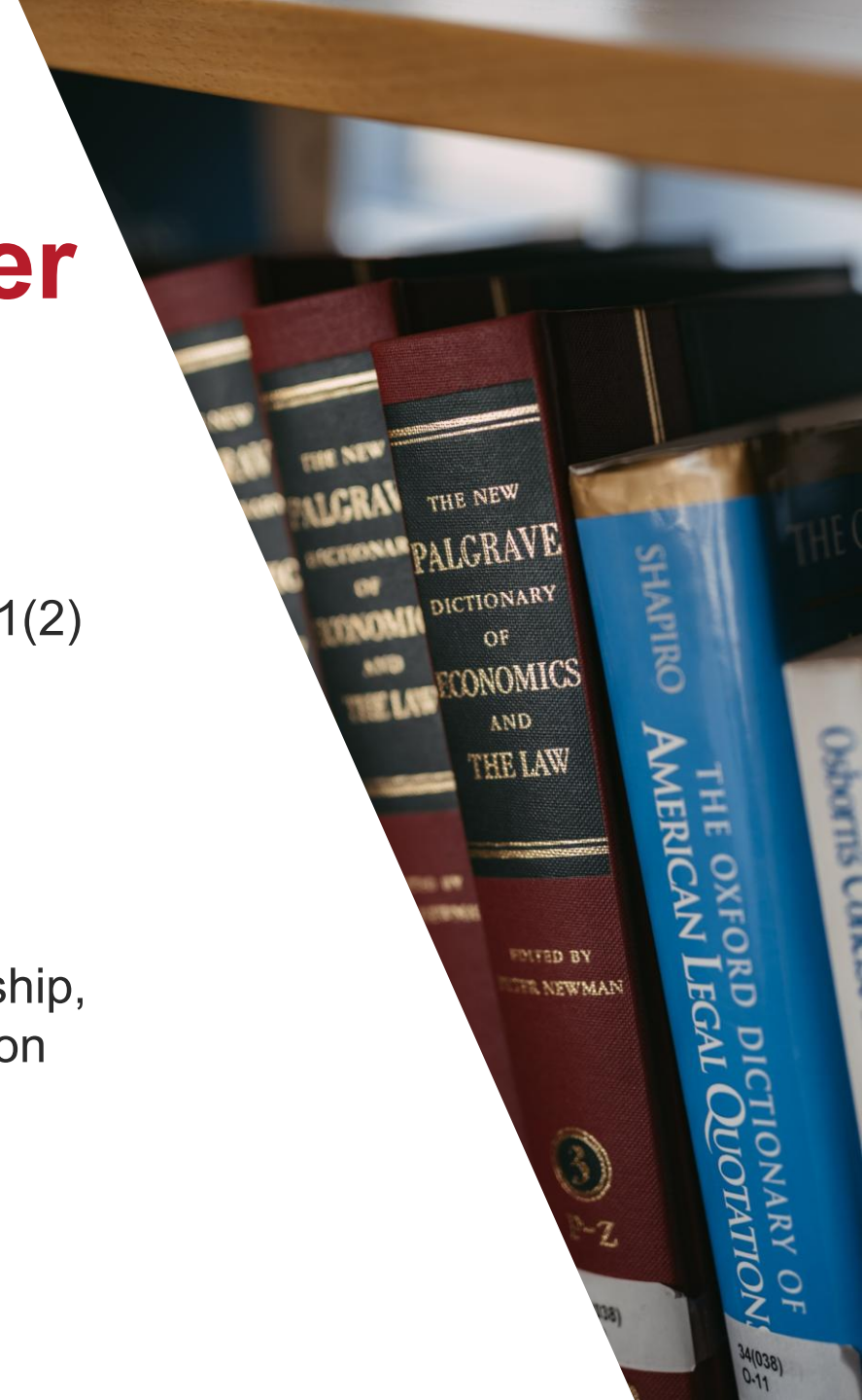


III Scope of application and interpretation of the EU Charter

- Art. 51 – Field of application:
 - Horizontal effect of the Charter – Art. 51 **does not** stipulate that private persons are bound to comply with the Charter
 - There is a potential for horizontal effect
 - Indirect horizontal effect – duty of courts to protect fundamental rights – in line with **ECtHR's positive obligations** doctrine (private law instruments are to be interpreted compatibly with the ECHR)
 - *Mangold* and *Kücükdeveci*: where a provision of national law contradicts a Charter right, it must be **disapplied**
 - Case C-341/05, *Laval* and Case C-438/05, *Viking*: Charter rights can equally be invoked in cases where the **fundamental freedoms are given horizontal effect**.

III Scope of application and interpretation of the EU Charter

- Art. 51 – Field of application:
 - Potential for **direct horizontal effect** is less evident
 - Such effect is not universally accepted
 - However, the right to **paid annual leave** enshrined in Article 31(2) CFR **has horizontal effect** - the provision could therefore be relied upon directly by an employee against his or her private sector employer (no need for national or EU laws)
 - However, **Charter rights could be invoked** in a private law relationship **if there is a connection with EU law** – in cases when a piece of EU legislation already governs that relationship, e.g. a Directive concerning working conditions or data protection rules. In case there is no link, it is the court that is required to interpret the relevant provisions



III Scope of application and interpretation of the EU Charter

- Art. 52 – scope and interpretation of rights and principles
 - Any limitation on the exercise of the rights and freedoms recognised by this Charter must be **provided for by law and respect the essence of those rights and freedoms**
 - Limitations may be made only **if they are necessary and genuinely meet objectives of general interest recognised by the Union** or the need to protect the rights and freedoms of others.
 - In so far as this Charter contains rights which **correspond** to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights **shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.**

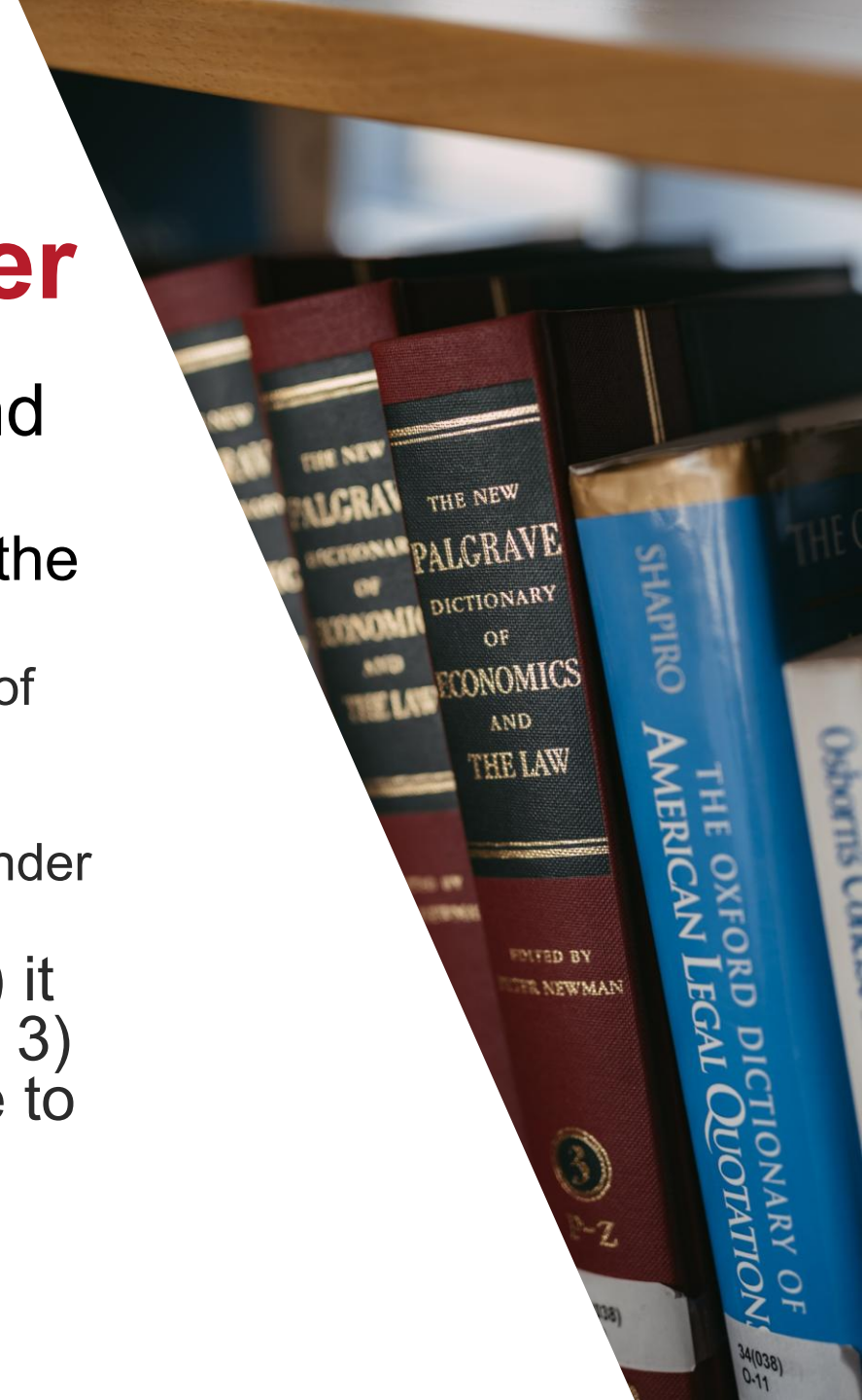
III Scope of application and interpretation of the EU Charter

- Art. 52 – scope and interpretation of rights and principles
 - In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted **in harmony with those traditions**.
 - The provisions of this Charter which contain principles may be implemented by legislative and executive **acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States** when they are implementing Union law.



III Scope of application and interpretation of the EU Charter

- Art. 52 – scope and interpretation of rights and principles
 - Violations with respect to rights are assessed on the basis of 3 step test:
 - 1) situation of a complainant must fall within the **scope** of the right;
 - 2) there must be **interference** with the right;
 - 3) interference cannot be regarded as being **justified** under Article 52(1) CFR
 - Limitation: 1) must be **provided for by law**; 2) it must respect the **essence of the right** restricted; 3) it must be **proportionate** (legitimate aim; suitable to achieve the aim; necessary)



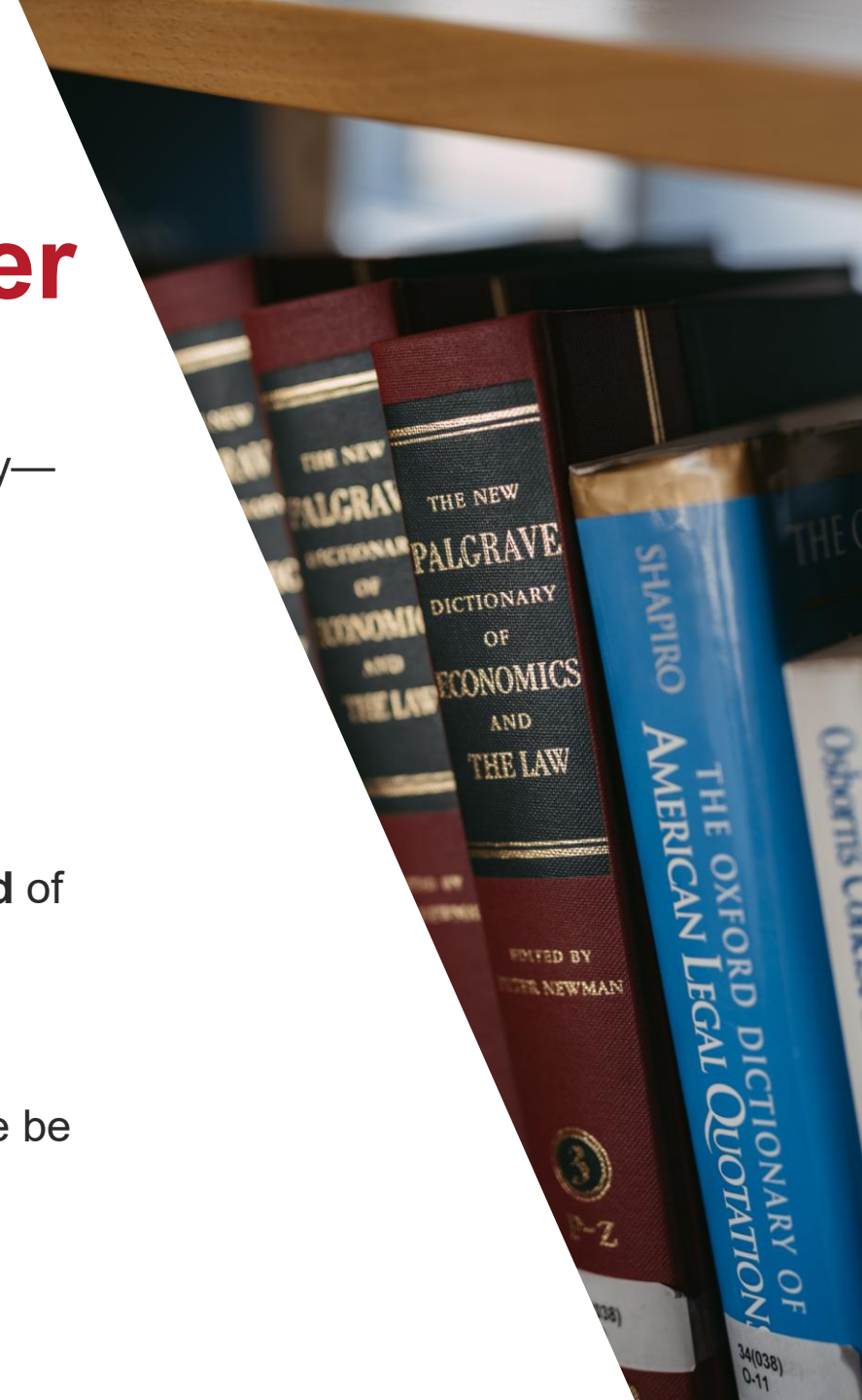
III Scope of application and interpretation of the EU Charter

- Art. 52 – scope and interpretation of rights and principles
 - Commentary to the limitations of Charter rights:
 - The law must additionally be **adequately accessible** and **formulated with sufficient precision**
 - The essence of a right can be defined as its **absolute and inalienable core**.
 - **Proportionality review:** 1) does the measure pursue a legitimate goal; 2) is it suitable to attain that goal; 3) is it the least restrictive measure available in order to achieve the aim equally well as the measure chosen; 4) have the competing interests been balanced correctly?



III Scope of application and interpretation of the EU Charter

- Art. 52 – scope and interpretation of rights and principles
 - The Charter contains a number of rights which—either wholly or partly—are also found in the Treaties
 - Charter does not alter these rights
 - There cannot be a conflict between the Charter right and the parallel Treaty right.
 - **Some rights correspond to the rights established by the ECHR**
 - By allowing the Charter to provide for more extensive protection than under the ECHR, Art. 52(3) treats the **ECHR as a minimum standard** of fundamental rights protection in the EU
 - ECHR provides the guideline: corresponding rights have the same meaning and scope
 - Absolute and non-derogable rights under ECHR are considered to be the same under the Charter



III Scope of application and interpretation of the EU Charter

- Art. 52 – scope and interpretation of rights and principles
 - all corresponding rights must be interpreted in light of the ECHR, no matter **whether all MS are bound by them or not**
 - If Member States have derogated under Art. 15 of the ECHR, that derogation works under the Charter
 - The ECJ's taking into account of ECtHR decisions - **a long tradition** and ought to be continued in that way.



III Scope of application and interpretation of the EU Charter

- Art. 52 – scope and interpretation of rights and principles
 - Constitutional traditions common to the MS - the original source of inspiration for fundamental rights recognized as general principles of EU law
 - Para. 4 of Art. 52 - to provide **orientation for the interpretation** of those rights that do not have a corresponding right in the ECHR
 - The duty to interpret rights in harmony with constitutional traditions common to the MS - deliberately formulated in that way
 - Practical effect of Para. 4 of Art. 52 – limited
 - Court of Justice of the EU has not pronounced on its interpretation

III Scope of application and interpretation of the EU Charter

- Art. 52 – scope and interpretation of rights and principles
 - Substantive provisions of the Charter contain **rights and principles**
 - Principles of the Charter **shall not be confused** with the principles of EU law
 - Charter provisions themselves **do not** expressly state whether they embody principles or rights
 - Answers depend on the interpretation of each substantive provision



III Scope of application and interpretation of the EU Charter

- Art. 52 – scope and interpretation of rights and principles
 - Principles under the Charter should be given an **autonomous meaning**, although there are parallels to principles expressed in MS constitutions
 - **Rights** can be understood as a subjective entitlement of a person with a corresponding duty resting on the person to respect them
 - Each right entails a corresponding duty
 - Rights entail positive and negative obligations
 - Para. 5 - **principles** lack justiciability, unless they have been implemented

III Scope of application and interpretation of the EU Charter

- Art. 52 – scope and interpretation of rights and principles
 - Charter principles, such as Article 37 or 38 CFR, are formulated in a way that suggests that they are binding on the Union and/or the MS
 - While both rights and principles spell out duties, principles do not contain a corresponding claim
 - Principles are **objective and programmatic norms** addressed to the Union and the MS and require **implementation** before they have legal effect

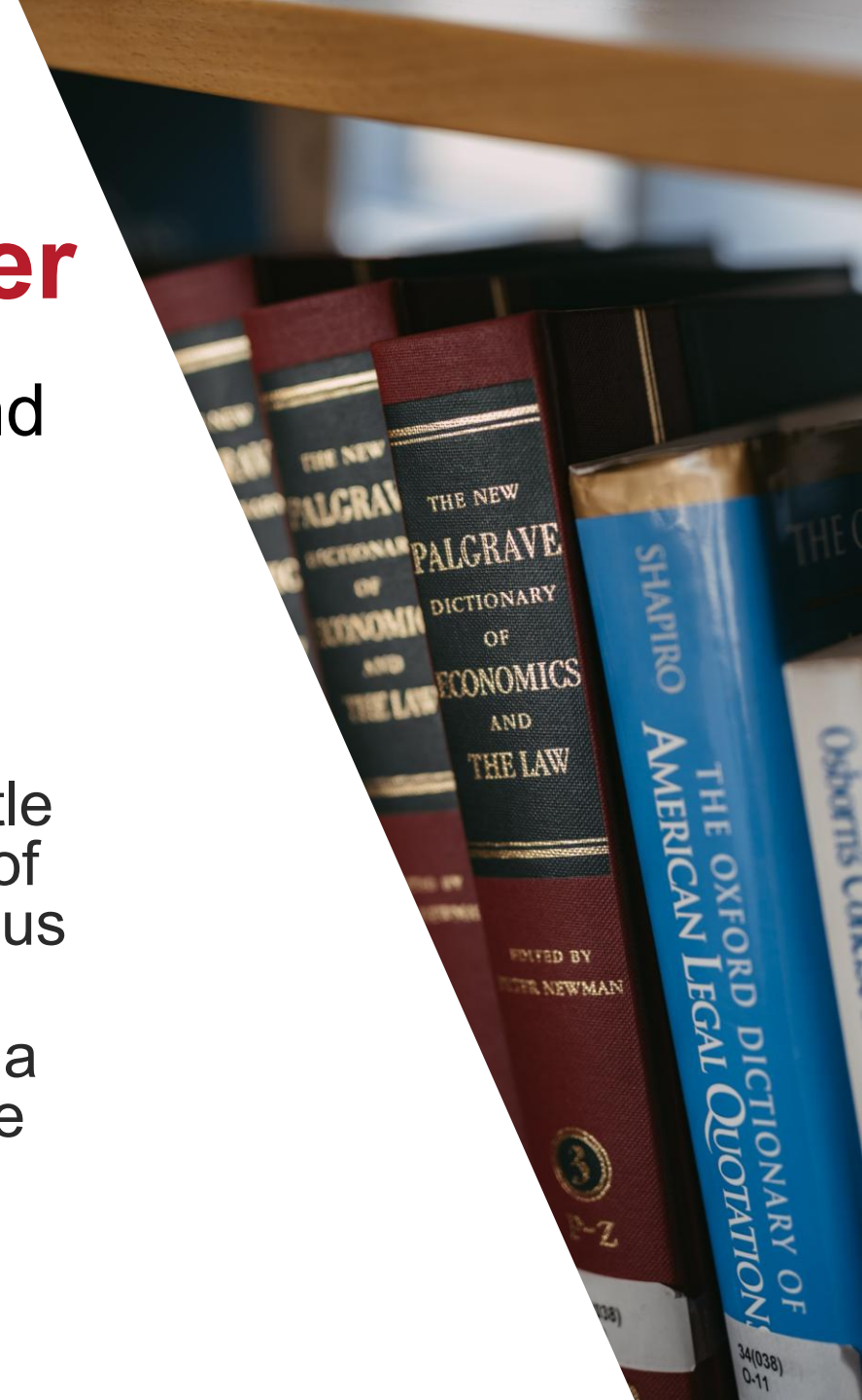


III Scope of application and interpretation of the EU Charter

- Art. 52 – scope and interpretation of rights and principles
 - Principles:
 - cannot of themselves give rise to a claim enforceable before a national or Union court;
 - their violation does not automatically result in a remedy;
 - they cannot even be considered by a court, unless they have been implemented and even then only insofar as the implementing act itself is concerned
 - What acts qualify as acts that **implement** principles?
 - Precautionary principle elaborated on by the Court of Justice of the EU

III Scope of application and interpretation of the EU Charter

- Art. 52 – scope and interpretation of rights and principles
 - **Identification** of Charter provisions containing principles is not straightforward
 - Each provision of the Charter needs to be interpreted separately
 - Certain provisions—despite being laid down in Title IV—are capable of being applied in the absence of any implementation measures and they should thus be considered rights
 - A key factor - whether the provision is phrased in a way that acknowledges its non-relational objective character

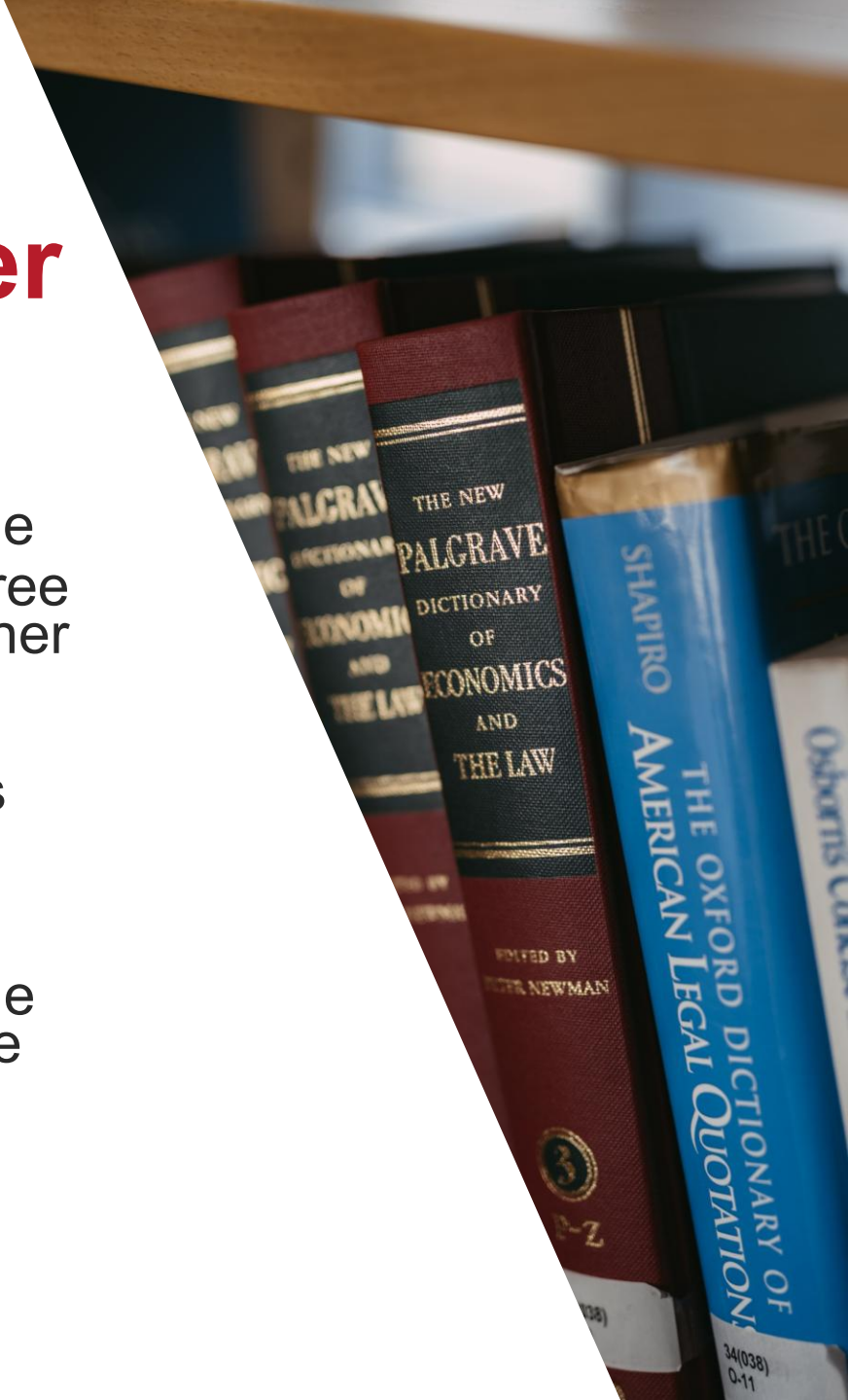


III Scope of application and interpretation of the EU Charter

- Art. 52 – scope and interpretation of rights and principles
 - Para. 6 of Art. 52 - account to be taken of national laws and practices as specified in the Charter
 - Charter Explanations - do not constitute binding authentic interpretations of Charter provisions, but they possess persuasive value as **interpretative aids**.
 - The Treaties are silent on the relationship between **Charter rights and the fundamental freedoms of the internal market**.
 - Both types of provisions embody subjective rights guaranteed in primary law
 - Potential for conflict
 - 2 types of cases: 1) derogations from fundamental freedoms must be compliant with fundamental rights; 2) the protection of fundamental rights is sometimes invoked by the state to justify a limitation of fundamental freedoms. To resolve the conflict - **proportionality test** -the fundamental right is balanced against the fundamental freedom

III Scope of application and interpretation of the EU Charter

- Art. 52 – scope and interpretation of rights and principles
 - *Schmidberger* (C-112/00, para. 74) case as an example
 - Having established that there was a restriction to the free movement of goods, the ECJ went on to discuss whether it was justified.
 - The protection of the fundamental rights in question (freedom of expression and freedom of assembly) was considered a legitimate interest for the state.
 - The ECJ not only considered the consequences of a restriction on the fundamental freedom, but also discussed the counterfactual - how far a decision by the national authorities according greater weight to the free movement right would have been a proportionate restriction of the fundamental right. (Margin of appreciation plays a role.)



III Scope of application and interpretation of the EU Charter

- Art. 53 – level of protection - delimitation clause between the Charter and other sources of fundamental rights
 - **Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party**
 - Court of Justice of the EU: in *Melloni*, the Charter only allows for a higher level of protection if ‘the **primacy, unity and effectiveness of EU law** are not thereby compromised’
 - ECHR as a minimum standard (*effect utile*)

III Scope of application and interpretation of the EU Charter

- Art. 54:
 - «Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.»
 - Prohibition of abuse of Charter rights



IV Rights and principles within the EU Charter

- Art. 1 – human dignity (as a matter of principle)
- Art. 2 – right to life
- Art. 3 – right to the integrity of the person
- Art. 4 – prohibition of torture and inhuman or degrading treatment or punishment
- Art. 5 – prohibition of slavery and forced labour
- Art. 6 – right to liberty and security
- Art. 7 – right for private and family life
- Art. 8 – protection of personal data (as a matter of principle)

IV Rights and principles within the EU Charter

- Art. 9 – right to marry and right to found a family
- Art. 10 – freedom of thought, conscience and religion
- Art. 11 – freedom of expression and information
- Art. 12 – freedom of assembly and of association
- Art. 13 – freedom of the arts and sciences (as a matter of principle)
- Art. 14 – right to education



IV Rights and principles within the EU Charter

- Art. 15 – freedom to choose an occupation and right to engage in work
- Art. 16 – freedom to conduct business (as a matter of principle)
- Art. 17 – right to property
- Art. 18 – right to asylum
- Art. 19 protection in the event of removal, expulsion or extradition



IV Rights and principles within the EU Charter

- Principles:
 - **Equality** – Art. 20-26 (equality before the law, non-discrimination, cultural, religious and linguistic diversity, equality between men and women, rights of the child, rights of the elderly, integration of persons with disabilities)
 - **Solidarity** – Art. 27-38 (worker's right to information and consultation within the undertaking; right of collective bargaining and action; right of access to placement services; protection in the event of unjustified dismissal; fair and just working conditions; prohibition of child labour and protection of young people at work; family and professional life; social security and social assistance; health care; access to services of general economic interest; environmental protection; consumer protection)

IV Rights and principles within the EU Charter

- Principles:
 - **Citizen's rights:** right to vote and stand as a candidate; right to good administration; right of access to documents; right to petition; freedom of movement and residence; diplomatic and consular protection
 - **Justice:** right to an effective remedy and to a fair trial; presumption of innocence and right of defence; principles of legality and proportionality of criminal offences and penalties; ne bis in idem;



V Cases regarding the EU Charter

- C-633/22 (*Real Madrid Club de Fútbol*)
 - Facts:
 - On 7 December 2006 in the newspaper *Le Monde* published an article by EE stating that Real Madrid and Football Club Barcelona have used doping services. On 23 December 2006 *Le Monde* publishes a justification letter that has been sent to it by club Real Madrid.
 - Interpretation of Articles 34 and 36 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
 - Proceedings between Real Madrid Club de Fútbol ('Real Madrid') and AE, on the one hand, and EE and Société Editrice du Monde SA, on the other, concerning **the enforcement in France of a judgment delivered in Spain ordering EE and that company to pay Real Madrid and AE damages by way of compensation for the non-material damage arising from the publication of an article concerning them in the newspaper *Le Monde*.**



V Cases regarding the EU Charter

- C-633/22 (*Real Madrid Club de Fútbol*)
 - Paris Court of Appeal cancelled the enforcement of Spanish judgments, as they are contrary to the international public order in France, **endangering freedom of expression**, and are unenforceable.
 - Art. 11 of the Charter – freedom of expression and information
 - The Court of Justice of the EU – must look at the concept of public order
 - One has to see, whether by enforcement an important norm of EU has been transgressed
 - MS must presume that also other MS enforce human rights



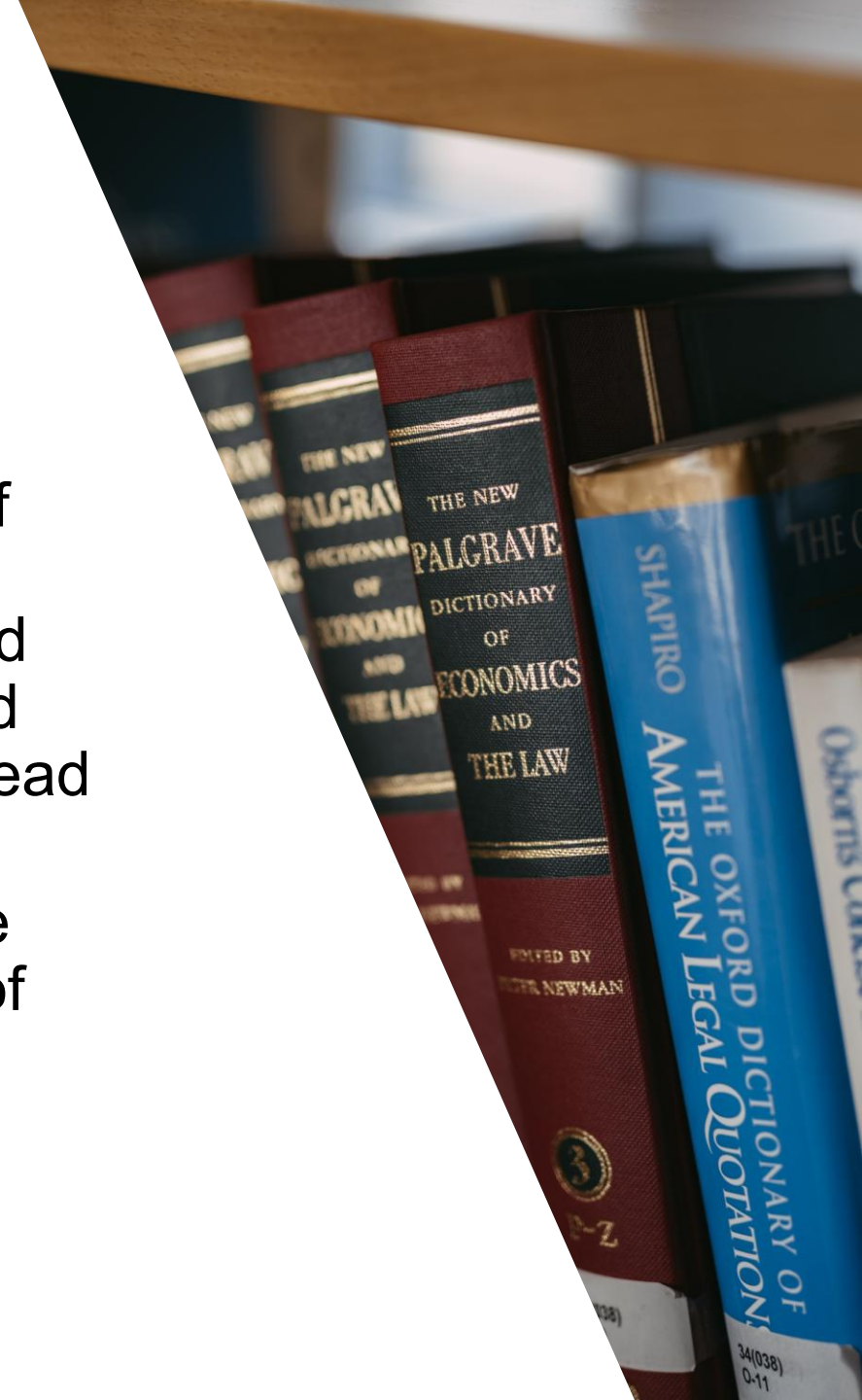
V Cases regarding the EU Charter

- C-633/22 (*Real Madrid Club de Fútbol*)
 - Para. 46: «When journalists and/or publishers and press organisations are concerned by the publication of a press article, freedom of expression and information is specifically protected by Article 11(2) of the Charter, which provides that **the freedom and pluralism of the media are to be respected.**»
 - Para. 49: «In that regard, it must be remembered that Article 11 of the Charter constitutes **one of the essential foundations of a pluralist, democratic society**, and is one of the values on which, under Article 2 TEU, the European Union is founded.» «In such a context, interferences with the rights and freedoms guaranteed by Article 11 **must be limited to what is strictly necessary**»



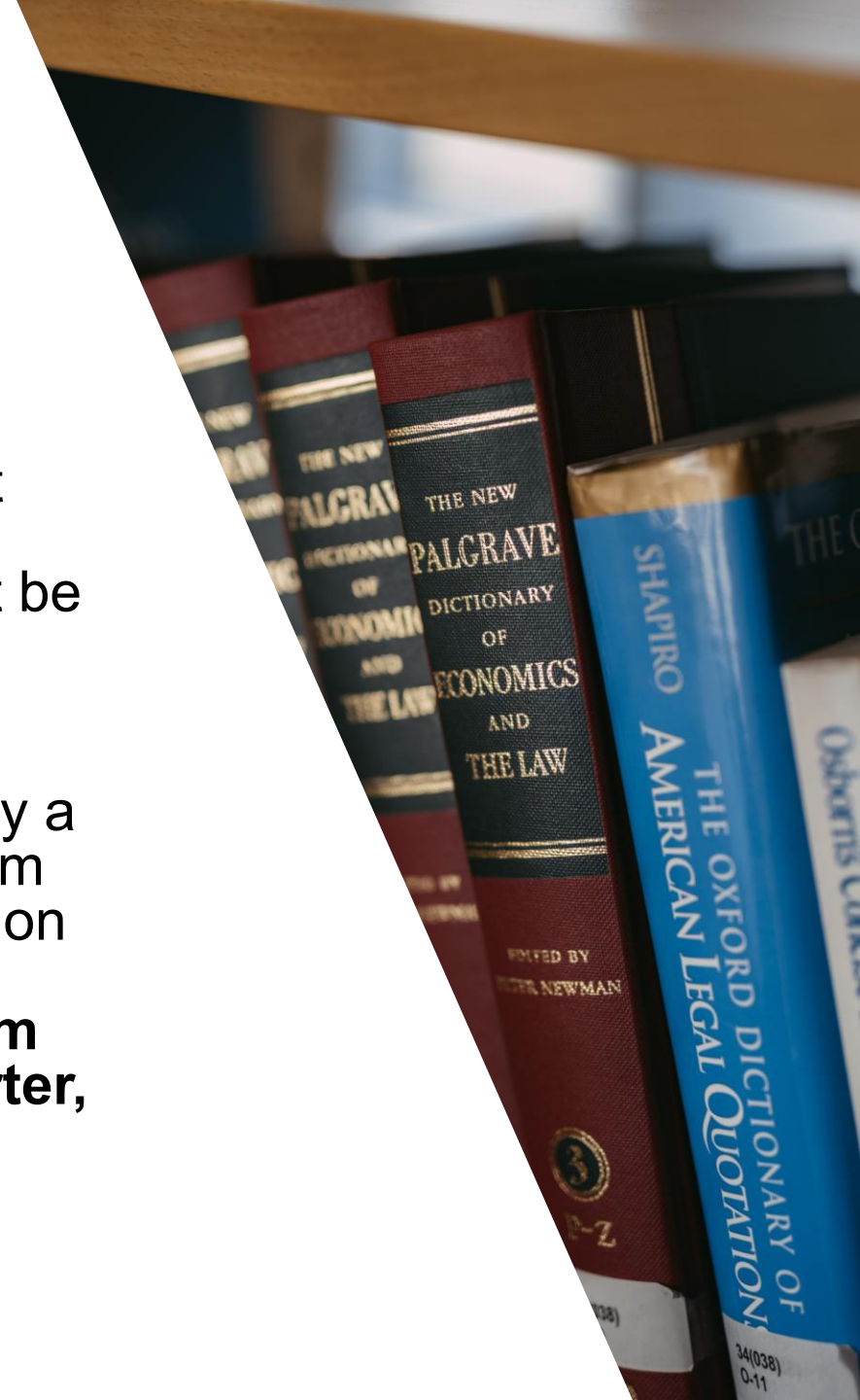
V Cases regarding the EU Charter

- C-633/22 (*Real Madrid Club de Fútbol*)
 - Para. 67: »Such a manifest breach of Article 11 of the Charter comes within public policy in the Member State in which enforcement is sought and therefore **constitutes the ground for refusal** laid down in Article 34(1) of Regulation No 44/2001, read in conjunction with Article 45 thereof.»
 - Para. 69: this judgment can serve as a preventive action in similar future cases regarding freedom of expression.



V Cases regarding the EU Charter

- C-633/22 (*Real Madrid Club de Fútbol*)
 - Para. 74: «the answer to the questions referred is that Article 34(1) and Article 45 of Regulation No 44/2001, read in conjunction with Article 11 of the Charter, must be interpreted as meaning that the enforcement of a judgment ordering a newspaper publishing house and one of its journalists to pay damages by way of compensation for the non-material damage suffered by a sports club and one of the members of its medical team due to harm caused to their reputation by the publication of information about them **must be refused where it would give rise to a manifest breach of the freedom of the press, as enshrined in Article 11 of the Charter, and thus an infringement of public policy in the Member State** in which enforcement is sought.»



V Cases regarding the EU Charter

- **C-808/21 and C-814/21 Commission v. Czech Republic and Poland**
 - Facts:
 - EU citizens who live in Czech Republic without its citizenship have no rights to become the members of political parties or movements – the MS has not complied with Art. 22 of the TFEU.
 - Art. 22 of the TFEU: **Every citizen of the Union** residing in a Member State of which he is not a national shall have **the right to vote and to stand as a candidate** in municipal elections and elections of the European Parliament

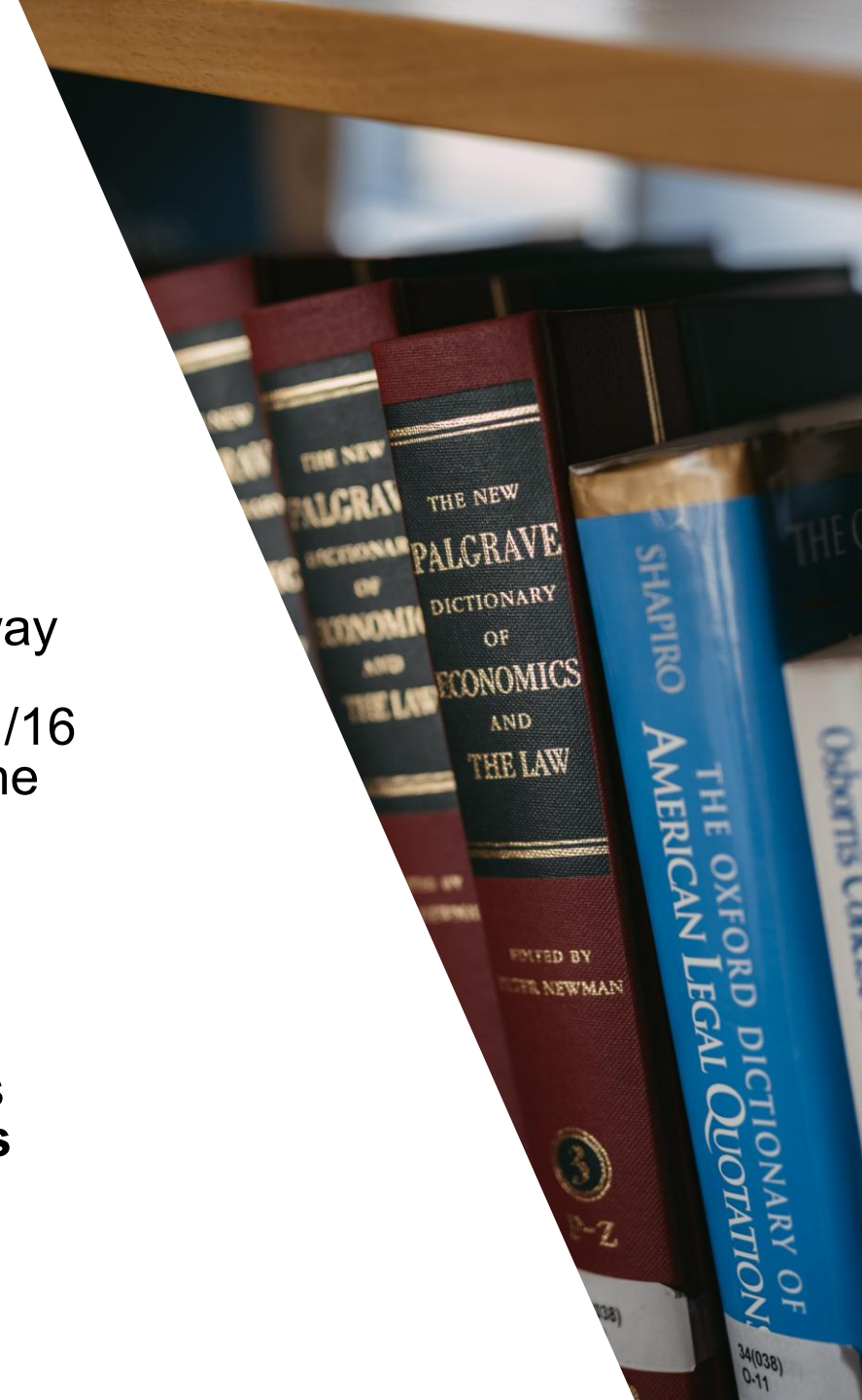


V Cases regarding the EU Charter

- **C-808/21 and C-814/21 Commission v. Czech Republic and Poland**
 - Conclusion:
 - Para: 162: «By guaranteeing EU citizens residing in a Member State of which they are not nationals the right to vote and to stand as a candidate in municipal and European Parliament elections in that Member State, under the same conditions as nationals thereof, **Article 22 TFEU gives concrete expression to the principles of democracy and, as pointed out in paragraph 97 above, of equal treatment of EU citizens, principles which are an integral part of the identity and common values of the European Union**, to which the Member States adhere and whose observance they must ensure in their territories.
 - Para. 163: «Consequently, allowing such EU citizens to become members of a political party or political movement in their Member State of residence so as to implement in full the principles of democracy and equal treatment **cannot be regarded as undermining the national identity of that Member State.**»

V Cases regarding the EU Charter

- C-432/23 *F SCS, Ordre des avocats du Barreau de Luxembourg*
 - Facts:
 - Whether Art. 7 of the Charter shall be interpreted in a way that the interaction between the attorney and the client shall be specially protected; and thereby Directive 2011/16 which required to submit all documentation regarding the relationship between the client and the attorney, is considered as intervention?
 - Case-law of the European Court of Human Rights that Article 8(1) ECHR protects the confidentiality of all correspondence between individuals and affords strengthened protection to exchanges between lawyers and their clients; **Art. 7 of the Charter is applicable as strengthened protection** (para. 52)



V Cases regarding the EU Charter

- C-432/23 *F SCS, Ordre des avocats du Barreau de Luxembourg*
 - Requiring information «constitutes an interference with the right to respect for communications between lawyers and their clients». (para. 52)
 - »it follows from that directive that, in accordance with Article 51(1) of the Charter, it is for each Member State to guarantee, in the context of the national procedures implemented for the purposes of that information gathering, the strengthened protection of communications between lawyers and their clients **guaranteed by Article 7 of the Charter.**» (para. 60)



V Cases regarding the EU Charter

- C-432/23 *F SCS, Ordre des avocats du Barreau de Luxembourg*
 - «Article 7 and Article 52(1) of the Charter must be interpreted as precluding a decision such as that described in paragraph 52 above, based on national legislation under which advice and representation by a lawyer in tax matters do not enjoy – except where there is a risk of criminal prosecution against the client – the strengthened protection of communications between lawyers and clients guaranteed by Article 7 of the Charter.» (Para. 75)



VI Relation to European Convention on Human Rights - Jurisdiction

European Convention on Human Rights, Art. 1:

*“The High Contracting Parties shall secure to everyone **within their jurisdiction** the rights and freedoms defined in Section I of this Convention.”*

VI Relation to European Convention on Human Rights - Jurisdiction

- **Jurisdiction > territory**
 - Control over a specific **place and people in it**
 - Control over **person**
 - Control over **specific circumstances**
- **Challenges**
 - Occupied territories
 - Israel and Palestinian territories
 - State's own territory not under full control of a State
 - Georgia and Southern Ossetia and Abkhazia



What to do in case if an individual in Southern Ossetia wishes to enforce his or her right to property?

VI Relation to European Convention on Human Rights - Jurisdiction

- ***Loizidou v. Turkey* case, ECtHR, 1996**
 - 1974 - intervention on Turkey in Cyprus
 - 1983 – proclamation of Turkish Republic of Northern Cyprus (TRNC (local administration))
 - Applicant Loizidou owned land plots in Northern Cyprus; she constructed flats, also one for her family; she took part in a demonstration, was arrested and detained
 - Turkey proclaimed: all the abandoned property is the property of the TRNC
 - The Commission of Human Rights denied all allegations; the case went to the Grand Chamber



VI Relation to European Convention on Human Rights - Jurisdiction

- *Loizidou v. Turkey* case, ECtHR, 1996
 - TRNC is not a State
 - Whether Turkey is responsible?
 - Cyprus obviously cannot be held accountable for violations in part of the island occupied by Turkey
 - “[..] the concept of “**jurisdiction**” under Article 1 of the Convention **is not restricted to the national territory of the Contracting States.**» (para. 52)



VI Relation to European Convention on Human Rights - Jurisdiction

- ***Loizidou v. Turkey* case, ECtHR, 1996**
 - Turkey exercised «**effective overall control**» of Northern Cyprus through its military presence there
 - Such control entails Turkey's responsibility for actions of TRNC; thus – **jurisdiction of Turkey**
 - Cyprus is the sole legitimate government of the island, which refuses to accept the legitimacy of TRNC

VI Relation to European Convention on Human Rights - Jurisdiction

- *Al-Jedda v the United Kingdom*, ECtHR, 2011
 - 2003, invasion of Iraq by the US and its Allies
 - **Complaint about internment without a trial**
 - Detention on the basis of Res 1546 of the UN SC undermining the right to security and liberty under the ECHR
 - UK courts and government: Res 1546 authorizes Multi-National Force to take all necessary measures to contribute to the maintenance of security in Iraq – responsibility of the UN (ultimate authority)



VI Relation to European Convention on Human Rights - Jurisdiction

- *Al-Jedda v the United Kingdom*, ECtHR, 2011
 - Applicant: in 2003, invasion of Iraq was not a UN operation; **unified command over multinational force had always been under the control and authority of the US and UK**

Court:

- UK and US – Occupying Powers, CPA, effective administration of the territory
- No attribution to the UN under Resolution 1511; **attribution to troop-contributing nations**



VI Relation to European Convention on Human Rights - Jurisdiction

- *Al-Jedda v the United Kingdom*, ECtHR, 2011

Court:

- Reporting to the UN regularly does not mean control by the UN; UN did not approve practice of internment without trial
- UN SC did **not** exercise effective control or ultimate authority and control over acts of the troops
- Violation of UK of the right to liberty and security

Conclusion: UK's exercise of control in military prisons – effective control – UK's responsibility
(**State agent authority and control**)



VI Relation to European Convention on Human Rights - Jurisdiction

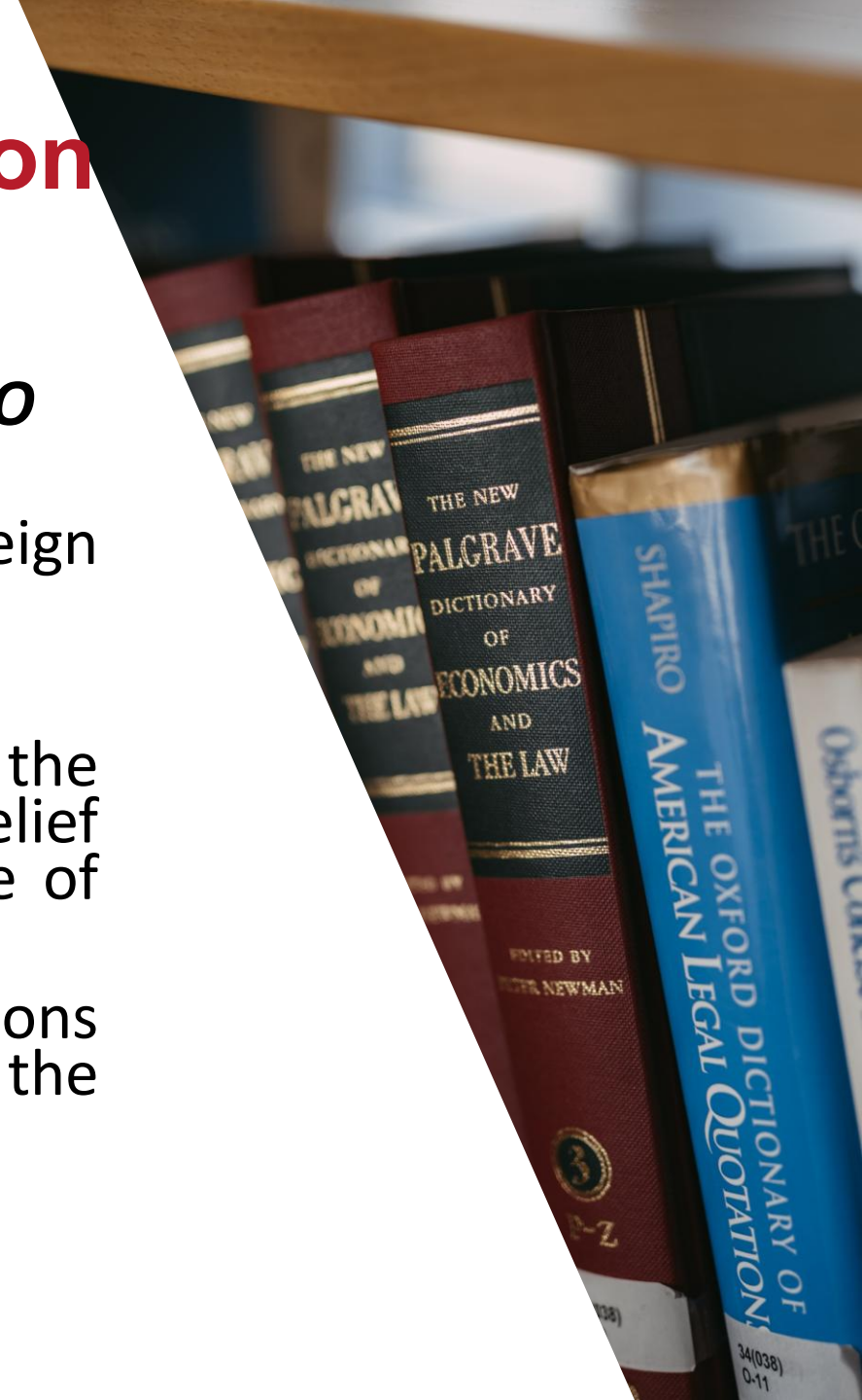
Bankovic and others v. Belgium and others (17 NATO Member States),
application no. 52207/99

- Complaint of 6 Yugoslav nationals
- NATO 1999 bombing of Radio and Television Station in Belgrade, Serbia – 16 killed, 16 seriously injured
- Claim that bombardment violated their right to life, freedom of expression, right to an effective remedy
- Extraterritorial jurisdiction
- Effects were outside of the territory of respondent States
- Art. 1 of ECHR – jurisdictional competence is primarily territorial

VI Relation to European Convention on Human Rights - Jurisdiction

Bankovic and others v. Belgium and others (17 NATO Member States), application no. 52207/99

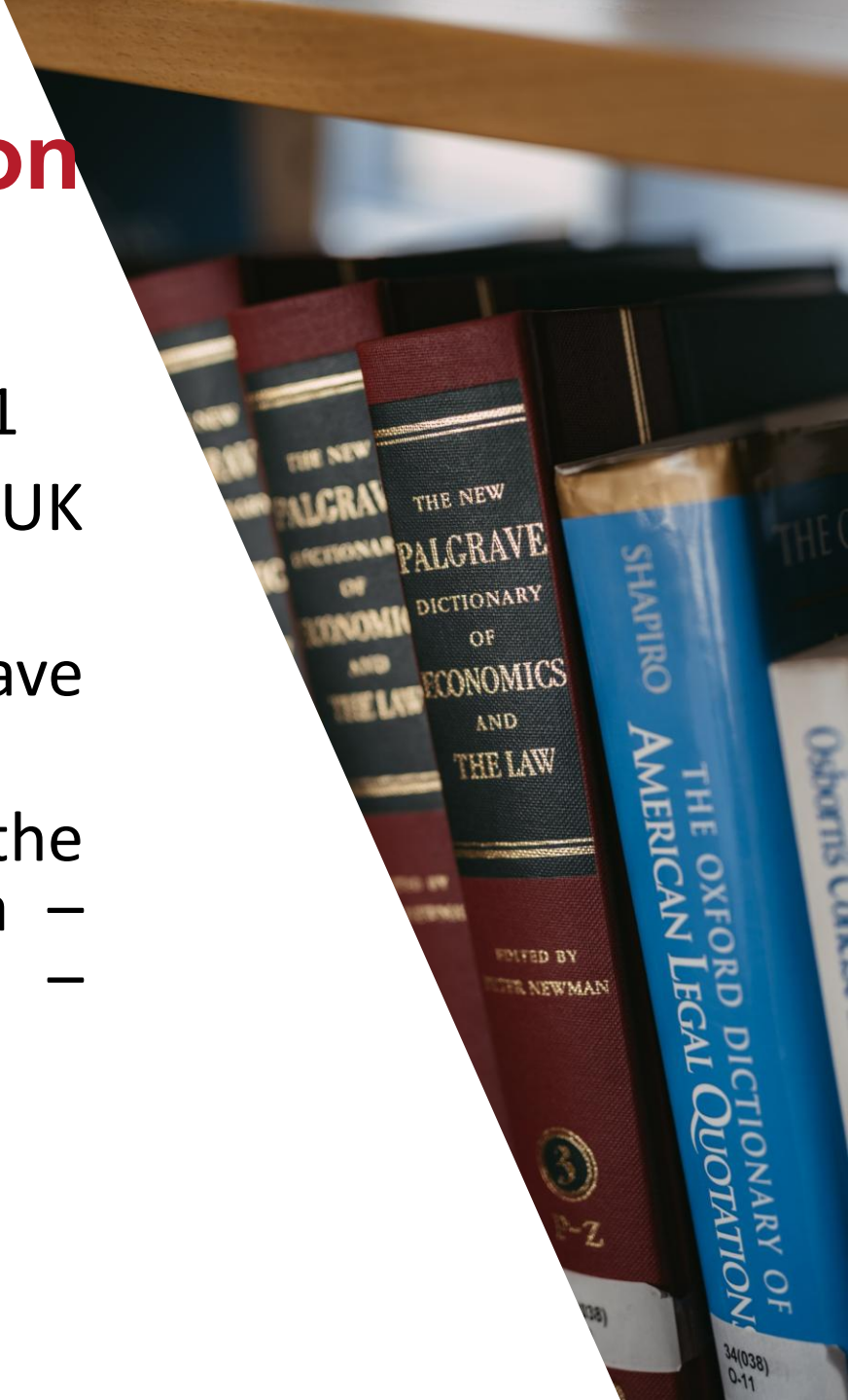
- Extraterritorial jurisdiction is limited by sovereign territorial rights of other relevant States
- Other basis of jurisdiction are exceptional
- There had been number of military missions of the Contracting States – none of them expressed a belief that its extra-territorial actions involved an exercise of jurisdiction within the meaning of Art. 1
- There was no jurisdictional link between the persons who were victims of the act complained of and the respondent States.



VI Relation to European Convention on Human Rights - Jurisdiction

Al-Skeini and others v. the United Kingdom, 2011

- 6 men in different instances killed in Iraq by the UK troops
- Complaints brought by fathers whose sons have been killed
- UK had authority and was responsible for the maintenance of security in the particular area – authority and control over individuals – jurisdictional link
- Violation of Art. 2 (procedural duty)



VI Relation to European Convention on Human Rights - Jurisdiction

- Derogations in time of public emergency

Measures suspending the enjoyment of human rights to the extent strictly necessary by the situations of very serious emergency.

- Prescribed by:
 - European Convention on Human Rights, Art. 15(1)
 - **War or other public emergency** threatening the life of the nation
 - Measures derogating from the Convention
 - To the extent strictly required by the exigencies of the situation
 - Should not be inconsistent with its other obligations under international law

VI Relation to European Convention on Human Rights - Jurisdiction

Conditions for making derogations:

- A public emergency threatening the life of the nation
- Strictly required by the exigencies of the situation (proportionality); **official** proclamation to be made in **good faith**; subject to the scrutiny of the Parliament
- No discrimination on grounds of race, colour, sex, language, religion or social origin



VI Relation to European Convention on Human Rights - Jurisdiction

- **Non-derogable rights** (Guarantees from which derogations are not allowed under any circumstances.)
 - Right to life
 - Prohibition of inhuman and degrading treatment
 - Prohibition of slavery and servitude
 - Freedom from *ex post facto* laws
 - No imprisonment for contractual obligations
 - Recognition before the law
 - Freedom of thought, conscience and religion



Why should or should not the EU join the European Convention on Human Rights?

- In 2013 – draft accession instruments
- In 2013 – European Commission asked the Court of Justice to give its Opinion on the compatibility of the draft agreement with the EU law
- 2014 Opinion:
 - EU is not a State – certain conditions need to be taken into account
 - In the result of accession – ECHR will be binding on the EU and its Members States – will become integral part of the EU

Why should or should not the EU join the European Convention on Human Rights?

- EU and its institutions would be subjected to external control by ECtHR
- ECtHR interpretation **would be binding** on the EU, but the Court of Justice interpretation would not be binding on the ECtHR.
- ECHR should be coordinated with the Charter of Fundamental Rights of the EU
- Primacy, unity and effectiveness of the EU shall not be compromised.



Why should or should not the EU join the European Convention on Human Rights?

- ECHR would require each EU Member State to check if the other Member States had observed fundamental rights, even if the EU imposes an obligation of mutual trust
- If ECtHR can give interpretation, this can affect the autonomy and effectiveness of the preliminary ruling procedure in the EU
- Interpretation and application of EU Treaties shall be submitted to the dispute settlement provided in the EU Treaties.



Why should or should not the EU join the European Convention on Human Rights?

- ECtHR jurisdiction should be expressly excluded for disputes between EU Member States or Member States and EU regarding the application of ECHR in the context of EU
- Co-respondent mechanism – ECtHR would be required to assess the rules of EU law concerning division of powers between the EU and its Member State
- Conclusion – draft agreement on the accession is not compatible with the EU law.





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Thank you!

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The importance of the Charter for criminal lawyers

Dr. Alba Hernandez Weiss

Oehmichen International (Berlin)



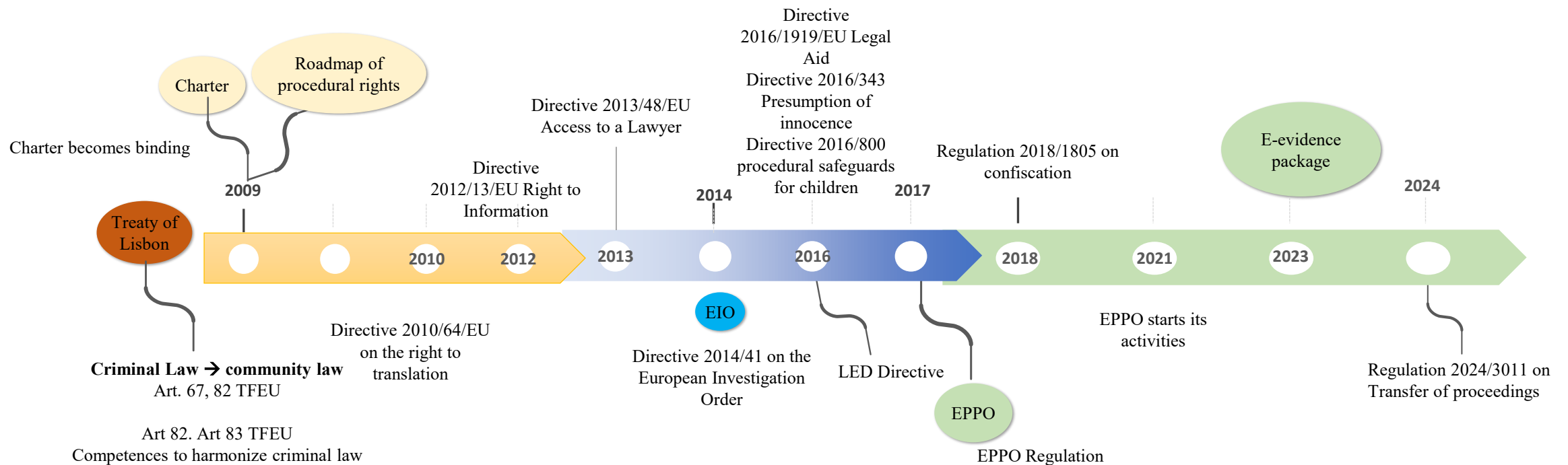
Overview

- I **Back to Basics: Art. 51 Charter**
- II **When and how is the Charter relevant?**
- III **Takeaways**



I Back to Basics

Growing relevance of the Charter with legislative activity in Area of Freedom, Security and Justice (AFSJ) (Art. 82 and Art. 83 TFEU)



I Back to Basics

■ Art. 51 Charter

- Always applicable to bodies of the EU, e.g. EPPO Cases



See Recital 30, 80, 83, 88, 94, 118, Art. 5, Art. 41 of the EPPO Regulation

- Member States only when "implementing EU-Law"

- CJEU C-617/10, *Fransson*, Rn. 21 "The applicability of EU-Law entails the applicability of the fundamental rights guaranteed by the Charter"
- CJEU, C-206/13, *Siragusa*, Rn. 24 ff, a certain degree of connection is required
- AG Bobek, C-298/16, *Ispas* para. 30, There must be a link, i.e. a rule of EU law that is applicable independently of and differently to the Charter itself

- Rule of thumb: Does EU-Law impose an obligation on Member States?

I Back to Basics

CJEU
28.11.2024 C-
432/22 PT

- “Implementation of EU Law” vs. “in the scope of EU-law”
 - Plea bargaining agreement in criminal proceedings in Romania
 - Connection to EU law: Framework Decisions 2004/757 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking and 2008/841 on combatting organized crime.
- The provisions **do not constitute an implementation of EU-Law in the sense of Art. 51(1)** (para 33-43)

The relationship between the provisions of substantive criminal law and the provisions of Bulgarian criminal procedural (...) in the case at issue *does not go above and beyond the fact of the former provisions being closely related to, or having an indirect impact on, the latter provisions*



I Back to Basics

- **“Implementation of EU Law” vs. “in the scope of EU-law”**
- The CJEU considered Art. 19(1) TEU was applicable whereby Member States must ensure effective legal protection in “the fields covered by EU law” irrespective of whether the Member States are implementing Union law (para. 45).
- The second subparagraph of Article 19(1) TEU is intended to apply to any court or tribunal which can rule on questions concerning the interpretation or application of EU law (para. 46).
- As Art. 19(1) enshrines a general principle of EU law, which is also enshrined in Art. 47(2) of the Charter, this provision must be taken into consideration when interpreting Art. 19(1) (para. 50).

II When and how is the Charter relevant?




II When and how is the Charter relevant?

Example 1: The Charter in the issuing MS

Facts of the case

- Mr. Gavanozov was involved in criminal proceedings in Bulgaria for tax related crimes.
- Involved in Mr. Gavanozov activities was a company located in Czech Republic represented by Mr Y, who was not himself accused.
- Bulgaria issued an EIO for search and seizure of the offices of the company and Mr.Y's home + for the interrogation of Mr. Y as a witness
- Bulgarian law didn't provide for legal remedies against the issuing of the European Investigation Order (EIO), nor for (direct) legal remedies against the above mentioned investigative measures.



CJEU 11.11.2021
C-852/19
Gavanozov II

II When and how is the Charter relevant?

Example 1: The Charter in the issuing MS

Relevant Provisions

Art. 14 EIO Directive: Legal Remedies

1. Member States shall ensure that **legal remedies equivalent to those available in a similar domestic case**, are applicable to the investigative measures indicated in the EIO.

Art. 11 (1) EIO Directive: Grounds for refusal

Without prejudice to Article 1(4), recognition or execution of an EIO **may be refused** in the executing State where:

f) there are substantial grounds to believe that the execution of the investigative measure indicated in the EIO **would be incompatible with** the executing State's obligations in accordance with Article 6 TEU and **the Charter**.

II When and how is the Charter relevant

Example 1: The Charter in the issuing MS

How did the CJEU decide?

- Issuing of an EIO = **implementation of EU-Law, triggering EU fundamental rights**
- Procedural autonomy **cannot circumvent** EU rights & guarantees such as the right to an effective remedy Art. 47 (1) Charter.
- Art. 47 Charter requires legal remedies enabling individuals to:
 - 1) challenge the **necessity and lawfulness** of investigative measures and
 - 2) request appropriate redress if those measures have been **unlawfully ordered or carried out** → ECtHR, 19 January 2017, *Posevini v. Bulgaria*, §§ 84 to 86



II When and how is the Charter relevant

Example 1: The Charter in the issuing MS

How did the CJEU decide?

- Art. 47 (1) Charter applies:
 - not only where EU-fundamental rights may have been violated
 - but also „where an act can adversely affect a person” → (CJEU 16.05.2017, C-682/15, *Berlio Investment Fund*).
- No legal remedy = violation of EU-Law (Art. 14 of the EIO Directive + Art.47 Charter)
- In the **absence of any legal remedy** the executing Member would have to **automatically refuse the execution of the EIO** (Art. 11(1) lit.f.)

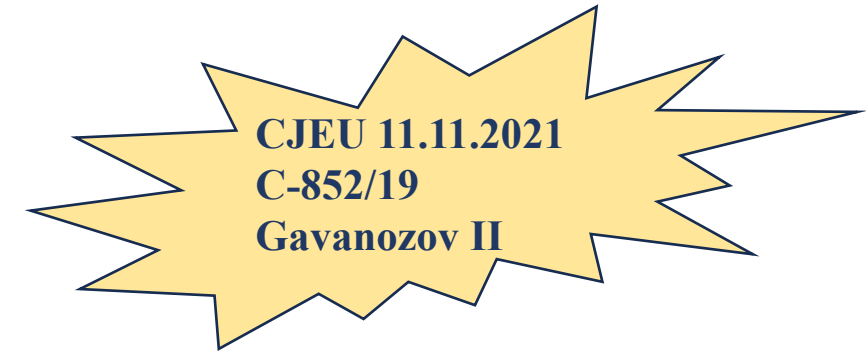


II When and how is the Charter relevant

Example 1: The Charter in the issuing MS

How did the CJEU decide?

- Member States are to ensure the application of and respect for EU law → **principle of sincere cooperation (Art. 4(3) TEU)**.
- Art 6 of the EIO Directive read in conjunction with Art. 47 Charter and Art. 4(3) TEU **precludes the issuing of an EIO** where that member State does not provide for any legal remedies.



II When and how is the Charter relevant

Example 2: The use of the Charter in the executing MS

- Council Framework Decision of 13 June 2002 on EAW
- Art. 1(3): this Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

2015, C-404/15 & C-659/15,
Aranyosi & Căldăraru: Art 4
Charter

2019, C-128/18 *Dorobantu*
C-128/18. Art. 4 Charter

2018, C-216/18 *LM* Art.
47(2) Charter

2022, C-562/21 & C-563/21
Openbaar Ministerie
Art 47(2) Charter

2023, C-261/22 *GN*,
Art.24 Charter; C-
699/21 EDL, *Puig
Jordi*

II When and how is the Charter relevant

Example 2: The use of the Charter in the executing MS

National
application of
two-step test



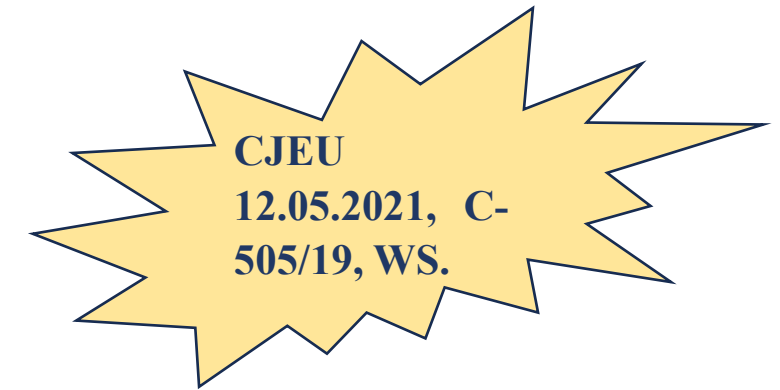
- Bundesverfassungsgericht, decision of 1 December 2020, 2 BvR 1845/18, 2 BvR 2100/18
 - The German Federal Constitutional Court (FCC) backed two constitutional complaints against surrender from Germany to Romania.
 - The ordinary courts had **failed to sufficiently assess and clarify** whether there is a specific **risk of inhuman and degrading treatment** due to the detention conditions in Romania.
 - The courts deciding on the surrender had failed to recognize **the significance and scope of the fundamental right under Art. 4 Charter** and **disregarded their duty to investigate**.

II When and how is the Charter relevant

Example 3: Beyond traditional forms of cooperation

- Facts of the case

- WS was a German national subject to a red notice from the US.
- The acts covered by the red notice had already been the subject of an investigation in Germany, which was discontinued after WS paid a sum of money in accordance with para 153a(1) of the StPO.
- WS brought an action against Germany (represented by the BKA) asking the red notice to be withdrawn.
- The German court referred questions to the CJEU on the applicability of the ne bis in idem principle and the processing of the data in accordance with Directive 2016/680.

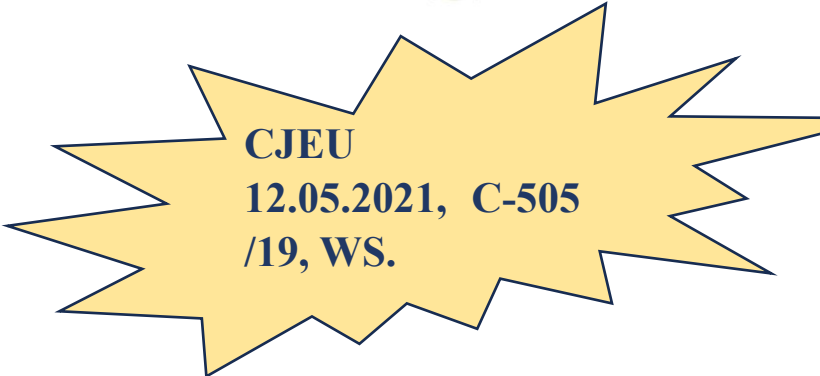


II When and how is the Charter relevant

Example 3: Beyond traditional forms of cooperation

- How did the CJEU decide

- Art. 54 CISA and Art. 21 TFEU are applicable and have to be interpreted in light of Art. 50 Charter.
- Art. 54 CISA is applicable to decisions by public prosecutors discontinuing the proceedings (para. 73).
- Provisional arrest following **an Interpol red notice** = 'prosecution' under Art. 54 of the CISA (para. 94-96).
- **Where it has been established** that the **conditions of the ne bis in idem are fulfilled** such actions are no longer permissible under EU-Law (para. 79-89).
- The recording of personal data would no longer be necessary → the data subject must be able to request its deletion (Art. 16(2) of Directive 2016/680).



CJEU
12.05.2021, C-505
/19, WS.

II When and how is the Charter relevant?

2. Procedural rules based on Union Law

Cases concerning: The “Roadmap” Directives or the “LED” Directive

- Directive 2010/64 on the right to interpretation
- Directive 2012/13 on the right to information
- Directive 2013/48 on the right of access to a lawyer
- Directive 2016/343 on the presumption of innocence and of the right to be present at the trial in criminal proceedings
- Directive 2016/800 on special safeguards for children in criminal proceedings
- Directive 2016/1919 on guaranteeing access to legal aid
- Directive 2016/680 on the processing of personal data for the purpose of the prevention, investigation, detection or prosecution of criminal offences

II When and how is the Charter relevant?

2. Procedural rules based on Union Law

- The existence of a procedural provision based on Union law within the proceedings is enough to be “implementing EU-Law” and trigger the applicability of the Charter.
- The Charter would however not apply in its entirety but rather just the provision relevant/necessary for the **interpretation and application of the provision**.



CJEU 1.08.2022 C-242/22, *TL Ministerio Publico*, para 42.
concept of “essential documents” (Art. 3 Directive 2010/64)

II When and how is the Charter relevant

3. Criminal offences with an EU Law connection

a) Sanctions are imposed for the violation of national provisions/standards adopted in implementation of EU law



CJEU C-634/18, *criminal proceedings against JI* (2020)

The CJEU relied on the principle of legality of criminal offences (Art. 49 Charter) to underline the need for the interpretation of national criminal provisions on illicit drug trafficking, falling within the scope of EU harmonization measures, **to be reasonably foreseeable**

II When and how is the Charter relevant

3. National cases: Criminal offences with an EU Law connection

b) Criminal sanctions which serve the objectives prescribed by EU law

- CJEU, 26.02.2013, C-617/10, *Fransson*, Art. 50 Charter (VAT).
- CJEU, 8.09.2015, C - 105/14 *Taricco*, Rn. 39, Art.49 Charter (VAT)
- CJEU, 5.06.2018, C-612/15, *Kolev*, Rn.50 (Custom matters)
- CJEU, 17.01.2019, C-310/16, *Dzivev*, Rn. 33 (VAT), principle of legality
- The link to EU-Law was the primary law obligation of Art 325 TFEU to combat the financial interests of the EU. In this respect, the member states are obliged to take criminal action, which also brings the criminal law guarantees into play.



Member States have procedural autonomy BUT the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of EU law can't be compromised (Example: CJEU 17.12.2015, C419/4,- **Webindlicenses!**)

III Some Takeaways

- 1 Identifying the (substantive or procedural) link to EU-Law (Art. 51 Charter)
- 2 The Charter functions as an interpretative tool, creates obligations, (Art. 47 Charter!) and acts as a limit to national procedural autonomy.
- 3 Making use of EU Law in national courts via the EU-law principles: e.g. the effectiveness principle i.e. national provisions cannot render the exercise of EU Rights practically impossible or excessively difficult (CJEU C-432/05, Unibet, Rn. 43); or duty of conforming interpretation.



III

Some Takeaways

4

Request the preliminary ruling procedure (Art. 267 TFEU; A last instance court is in fact obliged to refer questions to the CJEU). (PPU if person is in custody!)

5

Helpful guides: Fair Trials Toolkits, ECBA Handbook on the EAW



Any questions?

Thank you for your attention!

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Article 47 Charter

MIELLE BULTERMAN



Right to an effective remedy and to a fair trial

Article 47 Charter

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Right to an effective remedy and to a fair trial

Article 47 Charter

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right **to an effective remedy before a tribunal** in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and impartial tribunal before the law. In the pursuit of justice, everyone has the right of legal aid being advised, defended and represented. Legal aid shall be made available to everyone as far as such aid is necessary to ensure effective access to justice.

Article 13 ECHR:

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

an independent possibility of appeal to a competent national authority as far as such aid is necessary to ensure effective access to justice.

Right to an effective remedy and to a fair trial

Article 47 Charter

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Legal aid shall be made available to those who lack sufficient resources, where this is necessary to ensure effective access to justice.

Article 6 ECHR

In the determination of his **civil rights and obligations or of any criminal charge** against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law

Right to an effective remedy and to a fair trial

Article 47 Charter

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Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Right to an effective remedy and to a fair trial

Article 19 (1) TEU

The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.



Right to an effective remedy and to a fair trial

Article 267 TFEU

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Treaties;
- (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

Portuguese judges case (Case C-64/16)

Interpretation of Article 19 (1) second paragraph TEU (para. 37 judgment):

Every Member State must ensure that the bodies which, as 'court or tribunals' within the meaning of EU law, come within its judicial system in the fields covered by that law, meet the requirements of effective judicial protection.

Portuguese judges case (Case C-64/16)

Interpretation of Article 19 (1) second paragraph TEU (para. 37 judgment):

Every Member State must ensure that the bodies which, as **'court or tribunals' within the meaning of EU law**, come within its judicial system in the fields covered by that law, meet the requirements of effectiveness:

- Established by law
 - Permanent
 - Compulsory jurisdiction
 - Procedure *inter partes*
 - Application of rules of law
 - Independence
- (Para 38, C-64/16)

Portuguese judges case (Case C-64/16)

Interpretation of Article 19 (1) second paragraph TEU (para. 37 judgment):

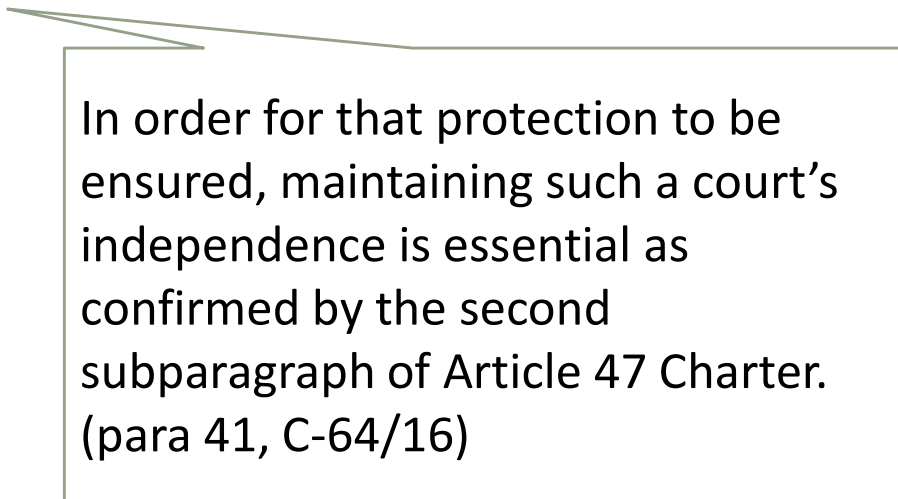
Every Member State must ensure that the bodies which, as 'court or tribunals' within the meaning of EU law, **come within its judicial system in the fields covered by that law**, meet the requirements of effective judicial protection.

May the national court rule on questions concerning the application or interpretation of EU law?
(para 40, C-64/16)

Portuguese judges case (Case C-64/16)

Interpretation of Article 19 (1) second paragraph TEU (para. 37 judgment):

Every Member State must ensure that the bodies which, as 'court or tribunals' within the meaning of EU law, come within its judicial system in the fields covered by that law, **meet the requirements of effective judicial protection.**



In order for that protection to be ensured, maintaining such a court's independence is essential as confirmed by the second subparagraph of Article 47 Charter. (para 41, C-64/16)

A.K. (C-585/18, C-624/18 en C-625/18)

Background case:

- New Polish law lowering the retirement age of judges.
- Establishment of new Disciplinary Chamber of Polish Supreme Court with competence to rule on labour issues concerning judges.
- Circumstances in which the new judges of the Disciplinary Chamber are appointed give rise to us doubts arise as to whether that chamber and its members will provide sufficient guarantees of independence and impartiality.
- Cases pending before Labour and Social Insurance Chamber of Polish Supreme Court of judges challenging their retirement.

EU law context:

- Council Directive 2000/78 establishing a general framework for equal treatment in employment and occupation

A.K. (C-585/18, C-624/18 en C-625/18)

Question: Does a chamber of a supreme court in a Member State, such as the Disciplinary Chamber, which is called on to rule on cases falling within the scope of EU law, satisfy, in the light of the circumstances in which it was formed and its members appointed, the requirements of independence and impartiality required by Article 2 and the second subparagraph of Article 19(1) TEU, Article 267 TFEU and Article 47 Charter?

Applicability Article 47 Charter:

The applicants rely on infringements to their detriment of the prohibition of discrimination on the ground of age in employment provided by Directive 2000/78. Consequently both Article 47 of the Charter, which enshrines the right to effective judicial protection, and Article 9(1) of the directive, which reaffirms it, may apply (para 114)

A.K. (C-585/18, C-624/18 en C-625/18)

- The Court must ensure that the interpretation which it gives to the second paragraph of Article 47 of the Charter safeguards a level of protection which does not fall below the level of protection established in Article 6 of the ECHR, as interpreted by the European Court of Human Rights. (para 118)
- The requirement that courts be independent has two aspects to it. The first aspect, which is external in nature, requires that the court concerned exercise its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions. (para 121)
- The second aspect, which is internal in nature, is linked to impartiality and seeks to ensure that an equal distance is maintained from the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law. (para 122)

A.K. (C-585/18, C-624/18 en C-625/18)

- Those guarantees of independence and impartiality require rules, particularly as regards the composition of the body and the appointment, length of service and grounds for abstention, rejection and dismissal of its members, in order to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it. (123)
- Where it is impossible to interpret national law in compliance with the requirements of EU law, in the light of the primacy principle, the national court is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for that court to request or await the prior setting aside of such provision by legislative or other constitutional means. (para 160)

Case C-432/22 (PT/Spetsializirana prokuratura)

Background case:

- Bulgarian Specialized Public Prosecutor's Office brings charges against 41 persons, including PT, for participation in a criminal organization involved in drugs distribution.
- Agreement PP and PT for settlement: guilty plea and three year custodial sentence, suspended for five years.
- Bulgarian law prescribes that :
 - 1) Approval of settlement needs to be granted by a ad court chamber and not the chamber hearing the criminal case against alle defendants.
 - 2) If settlement is entered into during the trial phase, the unanimous consent of the other defendants is required.

EU law context:

- Framework Decision 2004/757 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking.
- Framework Decision 2008/841 on the fight against organised crime

Case C-432/22 (PT/Spetsializirana prokuratura)

Questions to ECJ:

- In the context of criminal proceedings concerning charges brought for offences coming within the scope of EU law, is it compatible with Article 19(1) TEU and Article 47 Charter for a national law to impose a requirement under which a court other than the one hearing the case and before which all the evidence has been taken is to examine the substance of an agreement entered into between the public prosecutor and an accused person, whereby the reason behind that requirement is the fact that there are other co-accused persons who have not entered into an agreement?
- Is a national law under which an agreement discontinuing criminal proceedings is to be approved only with the consent of all other co-accused persons and their defence counsel compatible with Article 5 of Framework Decision 2004/757, Article 4 of Framework Decision 2008/841, Article 19(1) TEU and Article 52 of the Charter, in conjunction with Article 47 thereof?
- Does the second paragraph of Article 47 of the Charter require a court, after having examined and approved an agreement, to decline to examine the charges against the other co-accused persons where it has ruled on that agreement in such a manner that it does not make any statement as to their involvement or express an opinion as to their guilt?

Case C-432/22 (PT/Spetsializirana prokuratura)

Jurisdiction ECJ on Article 47 Charter:

- The provisions of the Charter are addressed to the Member States only when they are implementing EU law (para 33).
- Framework Decisions contains provisions falling within the scope of substantive criminal law in the field of drug trafficking and organized crime. No EU harmonization in the field of criminal procedural law had been adopted (para 38, 39).
- No implementation of EU law -> no jurisdiction ECJ

Jurisdiction ECJ on Article 19 TEU:

- Reference to 'fields covered by Union law', irrespective if whether MS is implementing EU law.
- National court rules on questions relating to the interpretation of Framework Decisions 2004/757 and 2008/841 and thus must meet the requirements of Article 19 TEU.

Case C-432/22 (PT/Spetsializirana prokuratura)

Question 1 as reformulated by the ECJ:

Does Article 19(1) TEU preclude a provision of national law which confers on an ad hoc court, and not on the court responsible for the case, jurisdiction to rule on an agreement for settlement of the case entered into by a defendant and the public prosecutor during the trial stage of criminal proceedings, where other defendants are also prosecuted in the same proceedings?

Case C-432/22 (PT/Spetsializirana prokuratura)

Important elements of ECJ's answer:

- Organisation of justice falls within competence MS, but they are required to comply with EU law
- Article 47 Charter must be taken into account when interpreting Article 19
- Interpretation must ensure a level of protection not disregarding Article 6 ECHR
- Article 19 TEU has direct effect: any national law contrary to that provision must be disapplied
- Two aspects of the requirement of independence: external and internal aspect

Case C-432/22 (PT/Spetsializirana prokuratura)

Requirement of independence (para 55):

There are two aspects to that requirement of independence. The first, which is external in nature, requires that the court concerned exercise its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions. The second aspect, which is internal in nature, is linked to 'impartiality' and seeks to ensure that an equal distance is maintained from the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law.


Case C-432/22 (PT/Spetsializirana prokuratura)

- Reference to *Mucha v. Slovakia* in which the ECHR found that there had been a breach of Article 6(1) ECHR concerning the principle of impartiality and the presumption of innocence, in a situation where the same court had ruled, first, on the plea bargaining agreements concerning eight persons prosecuted on the basis that they had participated in a criminal group and, second, on the merits of the charge against another person prosecuted on the basis that that person had participated in the same criminal group, since the judgments approving those agreements contained a specific and individual reference to the acts of which that latter person was accused and had therefore infringed his right to be presumed innocent until his guilt has been legally established. The European Court of Human Rights concluded from this that the doubts concerning the impartiality of the domestic court were objectively justified (para 58).
- No infringement of the principle of immediacy of criminal proceedings. Where a defendant chooses to plead guilty, voluntarily and with full knowledge of that of which he or she is accused and of the legal effects associated with that choice, he or she waives 'the right to have his or her case tried according to the ordinary procedure' and certain rights deriving therefrom (59).

General observations on the relation to ECHR

- Article 52(3) Charter:

In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

- Limited scope of application Charter
 - Interplay Charter and substantive EU Law
 - Direct effect and primacy of EU Law
 - Preliminary ruling procedure of Article 267 TFEU
- 

Relationship with Articles 41 Charter

Article 41 - Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Relationship with Articles 41 Charter

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(a) the right of every person to be heard before any individual measure which would affect him or her

C-277/24 (Adjak) para 41:

it must be stated that Article 41 of the Charter, relating to the right to good administration, is not applicable in the context of the dispute in the main proceedings, since it is addressed not to the Member States but solely to the institutions, bodies, offices and agencies of the European Union (judgment of 17 July 2014, YS and Others, C-141/12 and C-372/12, EU:C:2014:2081, paragraph 67). It is true, as the referring court states, that the right to good administration, enshrined in that provision, reflects a general principle of EU law (judgment of 17 July 2014, YS and Others, C-141/12 and C-372/12, EU:C:2014:2081, paragraph 68). However, it does not appear necessary, in the present case, to invoke the right to good administration, as a general principle of EU law, from a different perspective to that of the right to be heard and the right to have access to the file, which, in accordance with the case-law, form part of the rights of the defence also referred to by the question referred.

Evidence – Case C-310/18 PPU (Milev)

Background case:

- Under Bulgarian law the continuation of pre-trial detention is subject to the existence of “reasonable grounds” to suspect that an accused has committed a criminal offence.
- In national case law this has been interpreted as a “prima facie” finding that the accused may have committed the crime.

EU law context

- Directive 2016/343 on the strengthening of certain aspects of the presumption of innocence and the right to be present at the trial in criminal proceedings.

Question:

- Is Bulgarian law, as interpreted in the case law, compatible with Directive 2016/343 read in the light of Articles 47 and 48 Charter? Or should it be established that it is highly probable that an accused had committed a crime before pre-trial detention is allowed?

Evidence – Case C-310/18 PPU (Milev)

Ruling ECJ:

- In the light of the minimal degree of harmonisation pursued therein, Directive 2016/343 cannot be interpreted as being a complete and exhaustive instrument intended to lay down all the conditions for the adoption of decisions on pre-trial detention (para 47).
- It follows that Directive 2016/343 and, in particular, Article 3 and Article 4(1) thereof, do not preclude the adoption of preliminary decisions of a procedural nature, such as a decision taken by a judicial authority that pre-trial detention should continue, which are based on suspicion or on incriminating evidence, provided that such decisions do not refer to the person in custody as being guilty. Moreover, in so far as, by its questions, the referring court seeks to ascertain the circumstances in which a decision on pre-trial detention may be adopted, and has doubts, in particular, as to the degree of certainty which it must have concerning the perpetrator of the offence, the rules governing examination of various forms of evidence, and the extent of the statement of reasons that it is required to provide in response to arguments made before it, **such questions are not governed by that directive but rather fall solely within the remit of national law.**

Limitation periods – Case C-107/23 PPU (Lin)

Background case:

- Several individuals (C.I. a.o) have been convicted in Romania for tax evasion.
- They seek to set aside the final judgments concerning them in an extraordinary appeal procedure invoking breach of the principle that offences and penalties must be defined by law and the principle of retroactive application of the more lenient criminal law (enshrined in Article 49 Charter).
- They rely on judgment of Romanian constitutional court holding that the legislation on the interruption of the limitation period (of ten year) is unconstitutional.

EU law context

- PFI Convention and Directive 2017/1371 on the fight against fraud to the Union's financial interest in criminal matters.

Question:

- Must national court disapply rulings of constitutional court and supreme court if as a consequence of those judgments a considerable number of criminal cases, including cases related to offences of serious fraud affecting the financial interests of the EU will be discontinued because of the expiry of the limitation period for criminal liability?

Limitation periods – Case C-107/23 PPU (Lin)

Line of ECJ's answer:

- MS must ensure that national limitation rules allow effective punishment of infringements linked to VAT fraude (para 86).
- The legal situation resulting from the Romanian constitutional court and supreme court judgment entail a systemic risk of offences of serious fraud affecting the financial interests of the EU going unpunished. This is incompatible with Article 325(1) TFEU and the PFI Convention (para 91).
- The obligation to ensure the effective collection of the EU's resources does not dispense national courts from the necessary observance of the fundamental rights guaranteed by the Charter given that the criminal proceedings instigating for VAT offences amount to an implementation of EU Law (para 101).


The Scope and Application of the EU Charter of Fundamental Rights



Training for Defence Lawyers

RIGA, 5-6 JUNE 2025

Ciprian Băban – Criminal Defence Attorney



The right not to be tried or punished twice in criminal proceedings for the same criminal offence

- Article 50 EU Charter

- Interpreting case law: From Åkerberg Fransson until today
- Relation to ECHR

"The law is reason, free from passion." —
Aristotle



Overview

- Introduction to Article 50 CFREU
- Key CJEU case law trajectory
- Relationship with ECtHR and CJEU
- Practical implications for legal practitioners

Article 50 CFREU

*"No one shall be liable to be **tried** or **punished** again in criminal proceedings for an offence for which he or she has already been finally **acquitted** or **convicted** within the Union."*

- Applies when EU law is implemented
- Requires final decision on the same criminal offence

Key Cases – Ne bis in idem

- Åkerberg Fransson (2013): Tax fraud, first CJEU application
- Orsi & Baldetti (2017): Early proportionality balancing
- Menci (2018): Proportionality test formalized
- Garlsson Real Estate (2018): Insider trading
- Administration des douanes (2018): Customs enforcement
- Lopes Da Silva Jorge (2018): EAW and finality
- FO (2021): Customs, dual sanctions
- ZX (2021): Tax, dual sanctions
- bpost (2022): Competition law, Engel criteria
- Nordzucker (2022): Reinforcement of bpost

1. Åkerberg Fransson (C-617/10, 2013)

Facts: Swedish fisherman fined for undeclared income and criminally prosecuted.

Held: Article 50 applies if national measures implement EU law.

Significance: First major ruling extending the Charter's scope into national tax enforcement linked to EU obligations.

2. Orsi & Baldetti (Joined Cases C-217/15 and C-350/15, 2017)

Facts: Tax offences in Italy; administrative fines followed by criminal charges.

Held: Dual proceedings acceptable if proportionate, foreseeable, and coordinated.

Significance: Prefigured the proportionality test later formalized in Menci.

3. Menci (C-524/15, 2018)

Facts: Administrative fine and criminal charge for VAT fraud in Italy.

Introduced a **structured proportionality test** with five cumulative conditions:

1. Legal basis;
2. Legitimate aim of general interest;
3. Foreseeability;
4. Coordination between proceedings;
5. Sanctions not exceeding necessity.

Significance: Confirmed dual-track systems are permissible but must satisfy these conditions.

4. Garlsson Real Estate (C-537/16, 2018)

Facts: Insider trading with administrative penalties followed by criminal charges.

Significance: Applied the Menci test to financial markets.

5. Administration des douanes (C-115/17, 2018)

Facts: Customs-related offences; administrative penalties and criminal prosecution.

Held: Confirmed proportionality principles in customs law enforcement.

Significance: Reinforced Menci principles beyond tax fraud.

6. Lopes Da Silva Jorge (C-42/17, 2018)

Facts: European Arrest Warrant; surrender opposed on ne bis in idem grounds..

Held: Article 50 CFREU applies to final convictions across the Union.

Significance: Extended ne bis in idem's reach to cross-border enforcement.

7. FO (C-906/19, 2021)

Facts: Customs violations with overlapping administrative and criminal sanctions.

Held: Reaffirmed proportionality and coordination principles for dual enforcement

8. ZX (C-282/20, 2021)

Facts: VAT fraud; cumulative administrative and criminal sanctions.

Held: Confirmed proportionality and coordination under Menci.

9. bpost (C-117/20, 2022)

Facts: Competition law proceedings; postal regulator's fine and criminal investigation.

Held: Reaffirmed proportionality and coordination; explicitly referenced **Engel criteria**.

10. Nordzucker (C-151/20, 2022)


Facts: Competition case; dual sanctions.

Held: Reinforced bpost principles; dual-track permissible if proportional and coordinated.

Relationship to ECHR and ECtHR Case Law (The Strasbourg PoV)

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

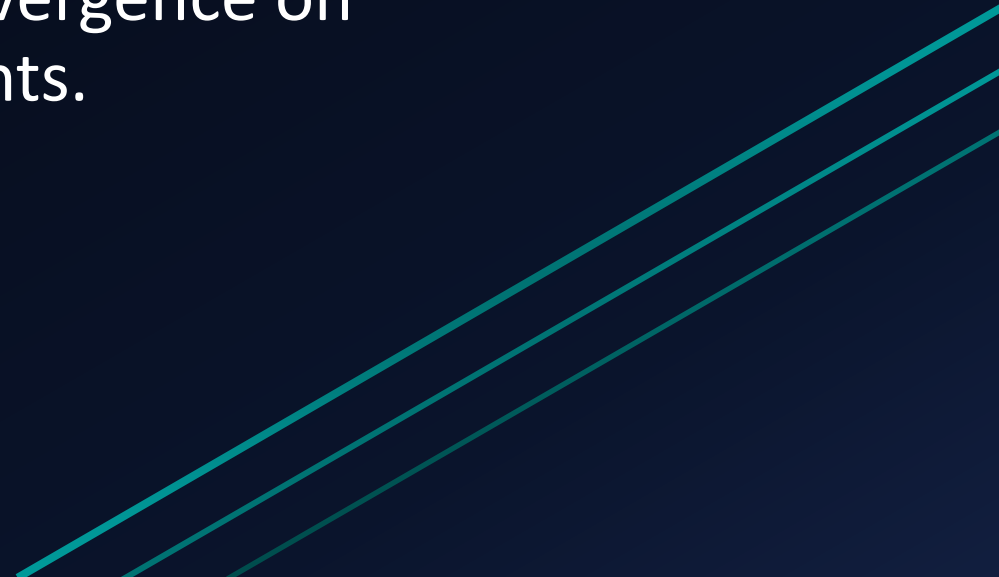
(Art. 4 - Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms)



- **Zolotukhin v Russia (2009)**: Emphasis on "same essential facts".

- **A and B v Norway (2016)**: Dual proceedings allowed if closely connected and proportionate.

- Comparison with CJEU: Increasing convergence on substance and coordination requirements.



Practical implications

- *WHAT IS “CRIMINAL” UNDER EU LAW?*
- *WHEN IS A SANCTION FINAL?*
- *HOW COORDINATED IS ENOUGH?*
- *HOW SHOULD LAWYERS ACT IN PRACTICE?*

Conclusions/Discussions:

- *Ne bis in idem* → not an absolute shield → **conditional protection** against double jeopardy.
- CJEU → nuanced proportionality-based framework since *Fransson*, increasingly in harmony with ECHR jurisprudence.
- Both courts now accept that dual proceedings may exist, but they must be **proportionate, predictable, and integrated**.
- Lawyers check → if proceedings are properly coordinated
→ if the accumulated burden crosses the line.



Stay cyber-safe!

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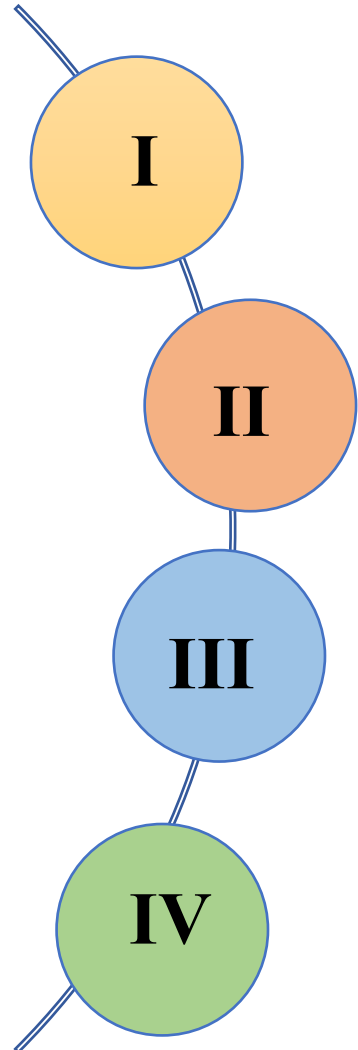
Presumption of innocence and the right to defence - Article 48 EU Charter

Dr. Alba Hernandez Weiss

Oehmichen International (Berlin)



Overview



The EU legal Framework

Art. 48 Charter: General issues

Recent CJEU case law

Takeaways



I The EU legal framework

□ Art. 48 EU Charter

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed

I The EU legal framework

□ The link to the ECHR

- Art. 52(3) establishes that the scope and meaning of Charter rights are the same as corresponding ECHR rights.
- Art. 52(3) of the Charter is intended to ensure the necessary consistency between those respective rights without adversely affecting the autonomy of EU law and that of the Court of Justice (*Garlsson Real Estate and Others*, C-537/16, para. 24 and 25).
- Art. 48 enshrines rights corresponding to those in Art. 6(2) and Art. 6(3) ECHR (C-377/18, *AH and Others*, para 41; Explanations to the Charter on Art. 48(2)).

I The EU legal framework

❑ The link to the ECHR

❑ Art. 48 Charter

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law



Art. 6(2) ECHR

2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed



Art. 6(3) ECHR

I The EU legal framework

□ The link to the ECHR

□ Art. 6(2) Art. 6(3) ECHR

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

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

- a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- b) to have adequate time and facilities for the preparation of his defence;
- c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

I The EU legal framework

❑ The procedural rights directives as an integral part of Art. 48

- ❑ Art. 48 Charter is completed by the procedural rights directives.
- ❑ They are an **an integral part of the protection afforded by Art. 48 Charter.**



- ✓ Right to a lawyer – Access to a Lawyer Directive;
- ✓ Right to legal aid – Legal Aid Directive;
- ✓ Right to interpretation and translation – Interpretation and Translation Directive;
- ✓ Access to case law and information accusation - Right to information Directive
- ✓ Right to be presumed innocent and to be present at trial (effective participation, right to silence)– Presumption of Innocence Directive

I The EU legal framework

❑ The procedural rights directives as an integral part of Art. 48 Charter

- ❑ C-157/22 (2023) *BK*, para. 34 “Those rules are intended, as is confirmed by recitals 27 to 29 of Directive 2012/13, to safeguard the fairness of the proceedings and allow for an effective exercise of the rights of the defence”.
- ❑ C-660/21 (2023) *K.B, F.S, vs. Procureur de la République*, para. 40 „Member States must (...) ensure that the requirements arising both from the right to an effective remedy and the right to a fair hearing laid down in Article 47 of the Charter, and the rights of defence laid down in Article 48(2) of the Charter, to which specific expression is given by those provisions of Directive 2012/13, are respected”.
- ❑ C-15/24 (2024) *Stachev*, para. 77, “it is necessary to take into account the purpose of Directive 2013/48, which is to promote, inter alia, the right to be advised, defended and represented laid down in the second paragraph of Article 47 of the Charter and the rights of the defence guaranteed in Article 48(2) thereof”.

II Some general issues




□ Art. 48 Charter

1. **Everyone who has been *charged*** shall be presumed innocent until proved guilty according to law
2. Respect for the rights of the defence of **anyone who has been *charged*** shall be guaranteed

II Some general issues

1 Expansion of defence rights in crimadministrative proceedings

- ☐ Art. 48 establishes that "Everyone who has been **charged** shall be presumed innocent until proved guilty according to law" and that „the rights of the defence of anyone **who has been charged** shall be guaranteed”.
- ☐ In principle Art. 48 only applies in criminal proceedings.
- ☐ Rights of the defence are however also general principles of EU-Law to be respected in all proceedings in which penalties may be imposed (C-550/07, *Akzo Nobel Chemicals* para. 92; C-791/19, *Commission v Poland* para. 204).

Spotlight CJEU Delivers Landmark Judgment
on Right to Silence in Administrative
(Punitive) Proceedings   

II Some general issues

1 Expansion of defence rights in crimadministrative proceedings

□ CJEU 2.02.2021, C-481/19 *DB v Consob* (Italy)

Connection to EU-Law

- Directive 2003/6 on insider dealing and market manipulation (market abuse)
- Regulation 596/2014 of the European on market abuse (market abuse regulation)



Natural persons who are subject to an **administrative investigation** for insider dealing have the right to remain silent when their answers might establish:

- 1) their liability for an offence that is punishable by **administrative sanctions of a criminal nature**
- 2) or their criminal liability (para 42-45).

II Some general issues

1 Expansion of defence rights in crimadministrative proceedings

❑ CJEU 9.06.2021, C-546/18 *Adler real estate* (Austria)

Connection to EU-Law

Directive 2004/25/EC of
21 April 2004 on takeover bids



Administrative penal sanction for an EU-Law infringement **cannot be based on a previous decision adopted without the participation of the defence** without breaching the presumption of innocence and the defence rights.

II Some general issues

2 Applicability to both natural and legal persons

❑ Defense rights **apply to legal persons as general principles of EU-Law** (CJEU Case law in competition Law).

❑ Directive 2016/343 on the presumption of innocence does not apply to legal persons but recognizes that these rights also apply to them (Recitals 13,14,15),

❑ CJEU 2.02.2021, C-481/19 *DB v Consob*



Art. 48 and the right to remain silent applies also to legal persons, however not in the same way (para. 47/48).

II Some general issues

2 Applicability to both natural and legal persons

- ❑ CJEU 10.11.2022, C-203/21, *Delta Stroy* (Bulgaria)

Connection to
EU-Law
Art. 325 TFEU-
VAT-fraud



- ❑ The presumption of innocence and defence rights are also **guaranteed for legal persons** (para. 59).
- ❑ A **criminal penalty** for an offence for which a natural person who has the power to bind or represent a legal person is allegedly liable, **may not be imposed on that legal person where it has not had the opportunity to dispute it.**



Recent CJEU Case Law: Overview

Case	Provisions it concerns	Overarching topic
13.06.2019, C-464/17, Moro	Art.6(4) Directive 2012/13/EU and Art. 48(2) Charter	Legal classification of acts and the modification of such classification Right to be informed of the charges
1.08.2022,C-242/22, Ministerio Publico TL	Art. 2(1) and 3(1) Directive 2010/64 and Art. 3(1)(d) Directive 2012/13, Art. 48(2) Charter	Direct effect
15.09.2022, C- 347/21, DD	Art. 8(1) Directive 2016/343 and Art. 48(2) Charter	Effective participation/ witness evidence
8.12.2022, C-348/21, HYA and others	Art. 8(1) Directive 2016/343 and Art. 48(2) Charter	Witness evidence/ Admissibility of evidence
8.06.2023, C-430/22 and C-468/22 VB I.	Art. 8(4) Directive 2016/343	Right to be present at the proceedings/ trial in absentia
22.06.2023, C-660/21, K.B, F.S, vs. Procureur de la République	Art. 3, Art. 4, Art. 8(2) Directive 2012/13/EU, Art. 48 Charter	Obligation to inform of right to remain silent Remedial provisions
9.11.2023, C-157/22, BK Spetsializirana prokuratura	Art. 6(4) Directive 2012/13/EU, Art. 3 and Art. 7(2) Directive 2016/343, and Art 47(2) Charter	Legal classification of acts and the modification of such classification Right to be informed
14.05.2024, C-15/24, Stachev	Art. 3(6)(b), 9, and 12(2) of Directive 2013/48/EU Access to a lawyer, and Art. 47 Charter	Vulnerable suspects/Waiver of access to a lawyer Remedial provisions/Admissibility of evidence/
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8.05.2025 C-520/23 Baralo, (Poland)	Art. 1(2), 2(1), 4(5),8 9 Directive 2016/1919, Art. 3, 12, 13, Directive 2013/48, Art. 47 and 48 Charter	Vulnerable suspects Direct effect Remedies/Admissibility of evidence

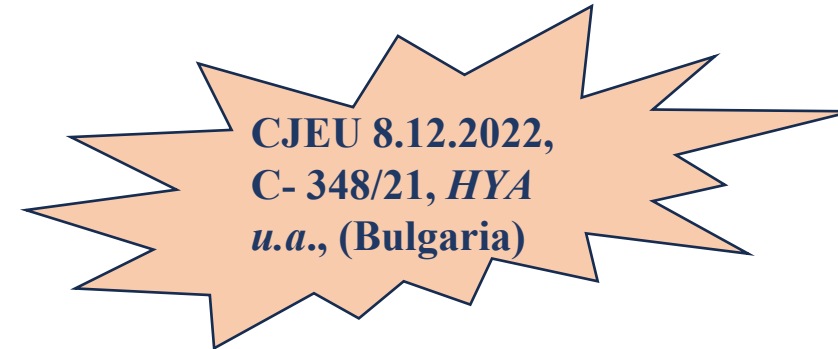
III Recent CJEU Case Law

- 1 Interplay between ECHR standards and EU-Law (Witness evidence)
- 2 Procedural rights with direct effect
- 3 Remedial provisions and Admissibility of evidence

III Recent CJEU Case Law

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III Recent CJEU Case Law



1 ECHR and EU Standards

Facts of the case

- ☐ HYA & others are charged with illegal immigration offences in Bulgaria.
- ☐ During the investigation, some of the prosecution's witnesses were heard in the absence of the defendants and their counsel.
- ☐ Court was unable to secure the witnesses' attendance at trial despite efforts to summon them.
- ☐ The prosecutor requested that the witness statements be introduced and read out as evidence at the trial.

III Recent CJEU Case Law

CJEU 8.12.2022,
C- 348/21, *HYA*
u.a., (Bulgaria)

1 ECHR and EU Standards

Relevant Provisions

Art. 8(1) of the Directive 2016/343

1. Member States shall ensure that suspects and accused persons have the right to be present at their trial.

III Recent CJEU Case Law

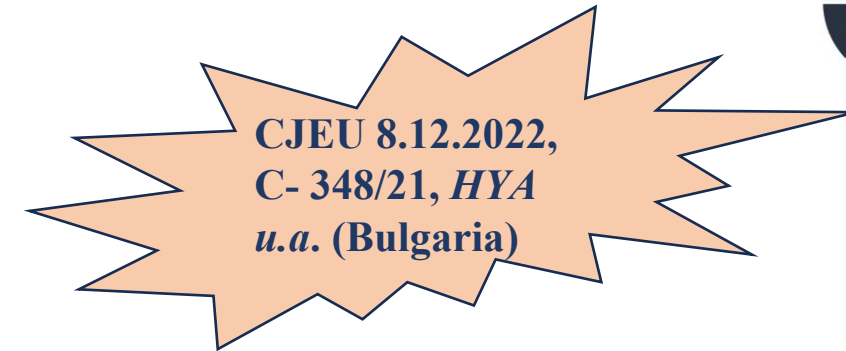
1 ECHR and EU Standards



What did the CJEU say?

- ☐ Art. 8(1) of the Directive guarantees **the right to be present at trial**, triggering applicability of Art. 47(2) and **Art. 48 Charter**.
- ☐ Art. 48 Charter must be interpreted in accordance with Art. 6 ECHR (Art. 52 (3) Charter & Recitals 33 & 47 of the Directive).
- ☐ Right to be present at trial includes **the right to participate effectively/the rights of the defence** – including to examine or have examined prosecution witnesses at that stage of the proceedings → (ECtHR, 15 December 2011, *Al-Khawaja and Tahery v. United Kingdom*, § 142).
- ☐ Restrictions/limitations on defence rights must comply with Art. 52(1) Charter .

III Recent CJEU Case Law



1 ECHR and EU standards

What did the CJEU say?

☐ Restrictions must be: 1) provided for by law, 2) must preserve the essence of the right and 3) must be proportionate.

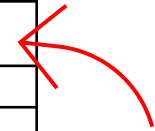
☐ Proportionality assessment (integrating ECHR standards)

ECtHR, 15 December 2015, *Schatschaschwili v. Germany*, § 105

- ☐ **Justified Absence:** good cause justifying the witness's absence; the court must do everything in its power to ensure the witness's attendance.
- ☐ **Not sole or decisive evidence:** the testimony of the witness must not be the only and decisive evidence for the conviction of the defendant.
- ☐ **Counterbalancing factors:** sufficient counterbalancing factors particularly in connection with the assessment of the witness's testimony.

III Recent CJEU Case Law

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III Recent CJEU Case Law

2 Procedural rights with direct effect

- ❑ CJEU 1.08.2022, *C-242/22, TL-Ministerio Publico* (Portugal) → Direct effect of Art. 21(1) and 3(1) of Directive 2010/64 (Right to translation of essential documents) and Art. 3(1) Directive 2012/13 (Right to information about rights).
- ❑ CJEU 8.05.2025, *C-520/23, Baralo* (Poland) → Direct effect of Art 3(2) and Art. 3(3) of Directive 2013/48 (Access to a lawyer without undue delay + constituent elements of this right) and Article 4(5) and 9 of Directive 2016/1919 (Right to legal aid and vulnerable persons).

III Recent CJEU Case Law

2 Procedural rights with direct effect

Lost in translation? Problems at a national level

- ☐ German Transposition of Art. 3 Directive 2010/64/EU – § 187(2) GVG: **§ 187(2) GVG** requires written translations of custodial orders, indictments, penalty orders and non final judgements.
- ☐ In the present case the BGH decided – referring to Art. 48 and Art 6 ECHR- that final judgements did not require a translation: no remedies or appeals are possible + the accused had a lawyer.
- ☐ Reasoning: Only documents essential to the fairness of the proceedings and defence rights have to be translated. Once proceedings are final, no procedural rights can be exercised.
- ☐ Refusal to refer a preliminary reference to the CJEU.



III Recent CJEU Case Law

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13.06.2019, C-464/17, Moro	Art.6(4) Directive 2012/13/EU and Art. 48(2) Charter	Legal classification of acts and the modification of such classification Right to be informed of the charges
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III Recent CJEU Case Law

3 Remedial provisions and admissibility of evidence

❑ The breach of any of the procedural rights contained in the directives requires a remedy

- ⊗ Directive 2010/64 on right to translation/interpretation: No specific remedies provision
- ✓ Art. 8(2) of Directive 2012/13 on right to information: Remedies
- ✓ Art. 12 Directive 2013/48 on access to a lawyer: Remedies and admissibility
- ✓ Art. 10 Directive 2016/343 on presumption of innocence : Remedies and admissibility
- ✓ Art. 8 Directive 2016/1919 on legal aid: Remedies
- ✓ Art. 19 Directive 2016/800 on procedural safeguards for children: Remedies

III Recent CJEU Case Law

3 Remedial provisions and admissibility of evidence

CJEU, 22.06.2023, C-660/21, <i>K.B, F.S</i> (France)	CJEU, 14.05. 2024, C-15/24 <i>Stachev</i> (Bulgaria)	CJEU, 8.05.2025 C-520/23 <i>Baralo</i> (Poland)
Self-incriminating statements obtained without information the right to remain silent (Art. 3.1 (e) and 3(2) and Art. 4(1) and 4(2) Directive 2012/ 13)	Illiterate suspect made incriminating statements after waiving right to a lawyer without proper understanding. (Art. 9(1) and 9(3) Directive 2013/48)	Incriminating statements made by a vulnerable suspect (mental health conditions) in contravention of their rights to information and access to a lawyer. (Art. 2(1)(b), 4(5) and 9 of Directive 2016/1919, and Art. 3(2)(a) to (c) and Article 3(3) of Directive 2013/48)

III Recent CJEU Case Law

3 Remedial provisions and admissibility of evidence

Art. 8(2) Directive 2012/14

Member States shall ensure that suspects or accused persons or their lawyers have the right to challenge, **in accordance with procedures in national law**, the possible failure or refusal of the competent authorities to provide information in accordance with this Directive.

Art. 12(2) Directive 2013/48

Without prejudice to national rules and systems on the admissibility of evidence, Member States shall ensure that, in criminal proceedings, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer or in cases where a derogation to this right was authorised in accordance with Article 3(6), the **rights of the defence and the fairness of the proceedings are respected**.

Art. 8 of Directive 2016/1919

Member States shall ensure that suspects, accused persons and requested persons **have an effective remedy under national law** in the event of a breach of their rights under this Directive.

III Recent CJEU Case Law

3 Remedial provisions and admissibility of evidence

☐ Remedies for breaches of procedural rights

- ☐ Member States must ensure that suspects and accused persons have the right to challenge breaches of the directives **in accordance with national law** (C- 660/21, *KB, FS*. Para. 35; C-520/23, *Baralo* para. 95).
- ☐ National procedural autonomy is **limited by Art. 47 and Art. 48 Charter**, (*KB,FS*, para. 37; *Baralo*, para. 98 and 101)
- ☐ A practical and effective opportunity to invoke such a breach requires respect for defence rights; reasonable period of time, access to a lawyer, to the case file and to legal aid (*KB,FS* para.43)
- ☐ Such a challenge should particularly be brought by a lawyer, unless this right has been rightfully waived (*KB,FS*, para. 44 and 47, *Baralo* para. 97).

III Recent CJEU Case Law

3 Remedial provisions and admissibility of evidence

TL-Ministerio Pubblico

Time limits on the possibility to challenge require that the person be informed of this (Rn.79 ff)

❑ Remedies for breaches of procedural rights

❑ CJEU C-660/21 *KB and FS*



Member States may impose time limits for challenges if rights are respected (para. 43)

There is **no obligation for the court to be able to raise the breach ex-officio** (para. 49)

❑ CJEU C-520/23 *Baralo*



No obligation to create **new direct remedies** under Art. 47 & 48 CFR if at least **indirect remedies exist**. (para. 99)

III Recent CJEU Case Law

3 Remedial provisions and admissibility of evidence

❑ Admissibility of evidence obtained in breach of EU-rights

- ❑ Admissibility of evidence obtained in violation of EU-Law is governed by national law C- 14/24, *Stachev*, para. 86) **limited by:**
 - ❑ **equivalence and effectiveness**
- ❑ The principle of effectiveness particularly means that special regard must be paid to the **adversarial principle** + right to a fair trial (*Stachev*, para. 88 ff.).
- ❑ No EU law obligation to automatically exclude illegally obtained evidence. The 'fairness of the proceedings as a whole' test applies when assessing illegally obtained evidence (*Stachev*, para. 97; *Baralo*, para. 103).
- ❑ Evidence to which the person is not able to respond effectively must be excluded (*Stachev*, para. 98).

III Recent CJEU Case Law

3 Remedial provisions and admissibility of evidence

Problematic application of the
“fairness of the proceedings as a
whole test” to pre-trial detention?

❑ Admissibility of evidence obtained in breach of EU rights

❑ CJEU C-14/24 *Stachev*



Right to a fair trial and defence rights apply to judicial review of pre-trial detention (para 77, 88-91)

The Court must be able to assess if evidence was obtained in breach of EU-Law (para. 98)

The proceedings as a whole test also applies at this level (para. 97)

❑ CJEU C-520/23 *Baralo*



The court must be able to assess breaches and draw inferences on the evidences probative value;
Exclusion not required if fairness safeguards are in place.

III Recent CJEU Case Law: Other topics

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III Some Takeaways

1

The framework for the protection of the presumption of innocence and defence rights is set out in: Art. 48 Charter, Art. 6 ECHR and the procedural rights directives

2

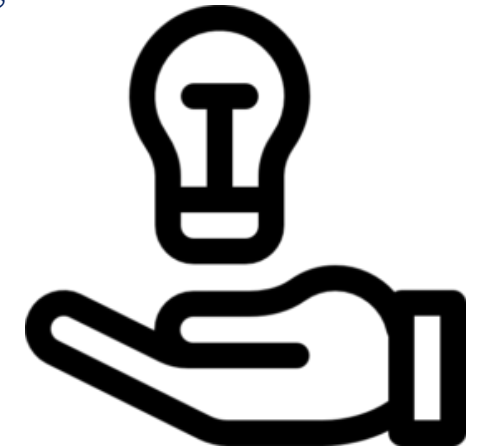
The guarantees in Art. 48 apply to both criminal and crimadministrative proceedings and to both natural and legal persons

3

Through convergence with the ECHR rights may be inferred that are not explicitly foreseen in Art. 48 or the procedural rights directives (Case HYA and others!)

4

Using the directives in practice: The key elements are direct effect and remedial provisions!



Any questions?

Thank you for your attention!

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The Scope and Application of the EU Charter of Fundamental Rights



Training for Defence Lawyers

RIGA, 5-6 JUNE 2025

Ciprian Băban – Criminal Defence Attorney

Principles of Legality and Proportionality of Criminal Offences and Penalties – Article 49 EU Charter

EUROPEAN ACADEMY OF LAW – ERA •
29 MAY 2025





June 04, 2025

Agenda

- Text & structure of Article 49
- Legality principle – scope & leading judgments
- Proportionality principle – scope & leading judgments
- Relationship with ECHR & ICCPR
- Practical implications for legislators & litigators
- Emerging challenges & discussion

Article 49 – Key Text

- §1 Nullum crimen / nulla poena sine lege; ban on retroactivity
- §1 Lex mitior rule – lighter penalty applies retroactively
- §2 Reference to crimes under general principles of international law
- §3 ‘Severity of penalties must not be disproportionate’

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

1. În interpretarea art. 325 din Tratatul de functionare a Uniunii Europene, art. 1 alin. (1) și art. 2 alin. (1) din Convenția elaborată în temeiul art. K.3 din Tratatul privind Uniunea Europeană, privind protejarea intereselor financiare ale Comunităților Europene, asocierea mai multor persoane în vederea săvârșirii unor fraude privind TVA poate fi considerată fraudă sau orice altă activitate ilegală care aduce atingere intereselor financiare ale Uniunii Europene independent de realizarea fraudei ce constituie scopul asocierii?

2. În ipoteza unui răspuns afirmativ la întrebarea anterior precizată, prevederile art. 2, art. 4 alin. (2) și (3) din Tratatul Uniunii Europene, art. 2 alin. (2) și art. 325 alin.(1) din Tratatul privind Funcționarea Uniunii Europene și art.2 alin. (1) din Convenția elaborată în temeiul art. K3 din Tratatul Uniunii Europene, astfel cum au fost interpretate prin Hotărârea Curții - Marea Cameră pronunțată în Cauza C-107/23 PPU [Lin], art.20, art. 49 alin. (1), art. 52 alin. (3) și art. 53 din Carta Drepturilor Fundamentale a Uniunii Europenei, trebuie interpretate în sensul că, în cadrul unei proceduri penale având ca obiect infracțiuni privind TVA și infracțiuni aflate în legătură cu acestea, instanța națională trebuie să lase neaplicat standardul național de protecție referitor la principiul *lex mitior*, astfel cum rezultă din jurisprudența obligatorie a instanței supreme din acel stat membru, standard potrivit căruia nu au efect întreruptiv de prescripție actele de procedură intervenite înainte de invalidarea dispoziției legislative naționale care reglementează cauzele de întrerupere a termenelor de prescripție a răspunderii penale, atunci când:

- a. neaplicarea acestui standard național ar fi incompatibilă cu interzicerea aplicării *lex tertia*, principiu de ordin constituțional?
- b. în aplicarea respectivei jurisprudențe naționale, s-ar putea considera că termenul general de prescripție a răspunderii penale s-a împlinit anterior pronunțării Hotărârii Curții - Marea Cameră, în cauza C-107/23 PPU [Lin]?
- c. neaplicarea, în temeiul dreptului Uniunii, a acestui standard național ar avea drept consecință asigurarea unui nivel de protecție a drepturilor fundamentale consacrate de Cartă care nu este echivalent sau comparabil cu protecția asigurată de art. 7 din Convenția Europeană a Drepturilor Omului?
- d. legea națională nu prevede criterii specifice în baza cărora instanța statului membru să poată evalua, în prealabil, riscul sistemic de impunitate generat de aplicarea acestui standard național în cazul infracțiunilor de fraudă gravă ce aduce atingere intereselor financiare ale Uniunii Europene?

1. In the interpretation of Article 325 of the Treaty on the Functioning of the European Union, Article 1(1) and Article 2(1) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on the protection of the European Communities' financial interests, can the association of several persons for the purpose of committing VAT fraud be considered fraud or any other illegal activity affecting the financial interests of the European Union, irrespective of whether the fraud was actually carried out as the purpose of the association?

2. If the answer to the previous question is affirmative, should the provisions of Articles 2, 4(2) and (3) of the Treaty on European Union, Article 2(1) and Article 325(1) of the Treaty on the Functioning of the European Union, and Article 1(1) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, as interpreted in the judgment of the Court – Grand Chamber in Case C-107/23 PPU [Lin], Articles 20, 49(1), 52(1), and Article 53 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that, in criminal proceedings concerning VAT offences and related offences, the national court must disapply the national standard of protection relating to the principle of lex mitior, as it results from the national court's constitutional case-law, when that standard prevents the court from interrupting the limitation period for criminal liability before the annulment of national legislative provisions that regulated the grounds for interrupting or suspending the limitation period, when:

- a. the non-application of this national standard would be incompatible with the constitutional principle prohibiting the application of lex tertia?
- b. according to the national case-law, it could be considered that the general limitation period for criminal liability expired before the delivery of the judgment of the Court – Grand Chamber in Case C-107/23 PPU [Lin]?
- c. the non-application, under Union law, of this national standard would have the consequence of ensuring a level of protection of fundamental rights enshrined in the Charter that is not equivalent to that provided by Article 7 of the European Convention on Human Rights?
- d. national law does not provide specific criteria on the basis of which the court of the Member State may assess, in advance, the specific risk and impact generated by applying this national standard in the case of fraud or other offences affecting the financial interests of the European Union?

Legality – Core Elements

- Precise & foreseeable definition of offences
- No creation of crimes by analogy or judicial law-making
- Temporal criterion: law in force at time of conduct
- Applies when Member States ‘implement EU law’ (Art 51 CFR)

Historical Roots & Comparative Overview

- Roman maxim: *nulla poena sine lege*
- Enlightenment thinkers: Beccaria, Montesquieu
- Parallel guarantees: Art 7 ECHR, Art 15 ICCPR
- Constitutional clauses: e.g. DE Art 103(2), PL Art 42

CJEU on Legality: Åkerberg Fransson & Taricco I

- C-617/10 Åkerberg Fransson – Charter applies to VAT penalties
- C-105/14 Taricco – VAT fraud & limitation periods
- Duty to disapply national rules undermining EU financial interests
- Sparked constitutional dialogue in Italy

Taricco II (M.A.S. & M.B.) – Constitutional Dialogue

- C-42/17, 5 Dec 2017 – legality over effectiveness
- CJEU accepts limits flowing from national constitutional identity
- Foreseeability central to nullum crimen principle
- Balances EU primacy with domestic rule-of-law safeguards

Legality & the European Arrest Warrant

- Advocaten voor de Wereld C-303/05 – EAW list offences
- KL (C-168/21, 2023) – executing state cannot reassess sentence proportionality
- Direct effect of legality in administrative sanctions (C-655/21)
- Mutual trust premised on compliance with Article 49

Practical Take-aways for Legality

- Draft offences with clear, accessible wording
- Insert explicit transitional provisions when amending sanctions
- Ensure official publication & codification of criminal statutes
- Judges must interpret strictly; analogy in malam partem prohibited

Proportionality – Concept & Test

- Three-step EU test: suitability, necessity, proportionality *stricto sensu*
- Expressly anchored in Art 49(3) & Art 52(1)
- Covers type & level of penalties
- Calls for individualised sentencing & legislative calibration

CJEU Methodology on Penalty Proportionality

- Administrative penalties of 'criminal nature' captured
- Effectiveness \neq severity: deterrence must be balanced
- Member States enjoy margin but subject to judicial review
- Ne bis in idem & proportionality intersect (Menci, 2018)

Case Study: C-655/21 (2023) – Mandatory 5 Years

- Bulgaria: trademark counterfeiting punishable by ≥ 5 years
- CJEU questioned compatibility with seriousness spectrum
- National court must be able to tailor sentence downward
- Emphasises need for flexible statutory ranges

Case Study: GDPR Fines & Article 49

- ILVA cases C-403/23 & C-404/23 (2024)
- High administrative fines assessed against Charter standards
- Proportionality *stricto sensu* requires cap linked to turnover & gravity
- Data-protection enforcement as a quasi-criminal sphere

Opinion C-460/23 Kinsa (2024) – Humanitarian Smuggling

- AG de la Tour: proportionality precludes punishment of purely humanitarian facilitation
- Distinguishes conduct for profit vs family reunification / necessity
- Signals need for humanitarian-exception clauses in national law
- Pending judgment may reshape migration-related offences

Administrative & Criminal Cumulative Sanctions

- Late-payment interest + criminal prosecution (C-544/24 pending)
- Menci criteria: duplication only if strictly necessary & proportionate
- Legislatures must coordinate procedures and cap overall severity
- Article 49(3) integral to ne bis in idem analysis

Interplay with ECHR & ICCPR

- Article 7 ECHR mirrors §1 & §2
- Strasbourg jurisprudence influences CJEU reasoning
- ICCPR Art 15 adds international dimension
- EU standard cannot fall below Strasbourg but may rise above

The **Bosphorus presumption** refers to a legal doctrine developed by the **European Court of Human Rights (ECtHR)** in the case **Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland** (judgment of 30 June 2005, Application no. 45036/98). It deals with the relationship between **European Union (EU) law** and the **European Convention on Human Rights (ECHR)**.

- When a **state party to the ECHR** implements **EU law**, the **ECtHR presumes that the protection of fundamental rights by the EU is equivalent** to that of the Convention. This creates a **presumption of conformity** with the ECHR.

Emerging Issues

- AI-generated offences & cybercrime penalties
- Corporate liability and multibillion-euro fines
- Environmental crime directive reform (2024)
- Counter-terrorism measures – proportionality under scrutiny

Checklist for Practitioners

- Confirm Charter applicability (Art 51)
- Apply proportionality test with evidence
- Invoke constitutional-identity arguments prudently
- Use Art 267 TFEU references for clarification



Stay cyber-safe!

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The scope and application of the EU Charter of Fundamental Rights

The right to privacy from the perspective
of EncroChat, SkyECC and ANOM
(ERA, Riga, June 2025)

Marie Poirot

The Encrochat and SKY ECC cases

- Police discovered encrypted phones used by criminal groups and impossible to intercept
- EncroChat and SKYECC were an mobile-phone telecommunications tool equipped with end-to-end encryption software which operated as a closed network and had been distributed from 2016 to 2020 for Encrochat and from 2015 to 2021 for SKYECC
- The servers of both Encrochat and SKY ECC were based in Roubaix, France
- French criminal investigations were opened in Lille targeting the company distributing Encrochat phones and their users, same for SKY ECC
- A joint investigation team was set up with France and the Netherlands, with the help of Europol and Eurojust for Encrochat, and including Belgium for Sky ECC

The Encrochat case – the hack

- A French judge allowed the hack of all Encrochat phones
- Data of **33,477 users in 122 countries** were collected during several months, including content of phone conversations
- The operation produced effects outside French territory, by enabling remote access to data from handsets located abroad
- The technique used to hack the phones is covered by national defence secrecy

The SKYECC case – the hack

- A French judge allowed the hack of all Encrochat phones
- Data of **+70,000 users in +100 countries** were collected during **nearly 2 years, on a daily basis**, including content of phone conversations, metadata (location) and notes contained in the devices, resulting in the collection of **1 billion messages**
- The operation produced effects outside French territory, by enabling remote access to data from handsets located abroad

The ANOM case – an app created by law enforcement

- An operation called Trojan Shield set up by Australian Federal Police and the US FBI to create and operate directly an encrypted application
- Undercover agents lured alleged criminals into using it
- Data of **12,000 users in +100 countries** were collected from 2018 to 2021, including content of phone conversations, resulting in the collection of **27 million messages**

Data-driven investigations

- Data-driven investigations consisting of:
 - (1) Obtaining huge amounts of data
 - (2) Storing the data and converting it in concrete information
 - (3) Analyzing the information to turn in into « intelligence »
 - (4) Refined this « intelligence » to turn it into evidence and enable to prosecute criminals.
- Is the collection of huge amounts of data compatible with European law and the right to privacy?

EU Legal framework on the right to privacy

Charter of Fundamental Rights of the European Union

Article 7

Respect for private and family life

*Everyone has the right to **respect for his or her private** and family life, home and **communications**.*

Article 8

Protection of personal data

- 1. Everyone has the right to the **protection of personal data concerning him or her**.*
- 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.*
- 3. Compliance with these rules shall be subject to control by an independent authority.*

EU Legal framework on the right to privacy

European Convention on Human Rights

Article 8

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

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

EU Legal framework on the right to privacy

Article 7 of the Charter and Article 8§1 of the ECHR aims to protect the confidentiality of communications.

This covers the contents of the actual messages sent, but also information relating to such messages (called “metadata”: traffic data, such as the date, time, duration, telecommunications numbers, location data, IP address...).

Intercepting this data amounts to an interference with the right to privacy and the right to respect for correspondence.

EU Legal framework on the right to privacy

General rules concerning the protection of personal data (« *European personal data protection package* »):

- **GDPR:** *Regulation 2016/679 of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data* (applies to private or public organizations that process the personal data of individuals resident in the EU or offer goods and services to them)
- **Law Enforcement Directive ("LED Directive"):** *Directive (EU) 2016/680 of the European Parliament and of the Council. of 27 April 2016 on the protection of individuals with regard to the processing of personal data by competent authorities for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties and on the free movement of such data*

Legal framework of EU law on the right to privacy and to data protection

Sector-specific rules concerning the protection of personal data:

ePrivacy Directive : Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (*Directive on privacy and electronic communications*)

Which EU instruments are applicable to criminal investigations?

- GDPR?

Article 2 : « *This Regulation does not apply to the processing of personal data: (...)*

(d) by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security."

- ePrivacy Directive?
- LED Directive?

Application of ePrivacy Directive in the context of criminal investigations

- ePrivacy Directive: scope and main prohibition
- Is it relevant to Encrochat, SKY ECC and ANOM cases?

Legal framework of EU law on the right to privacy and to data protection

ePrivacy Directive : article 5 (principle of confidentiality)

“Confidentiality of the communications

*1. Member States shall ensure the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services, through national legislation. In particular, **they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users**, without the consent of the users concerned, except when legally authorised to do so in accordance with Article 15(1). (...)*

On the scope of the ePrivacy Directive

ECJ, 6 October 2020, La Quadrature du Net, C-511/18 :

The Directive applies to the processing carried out by electronic communications service providers as a result of obligations imposed on them by public authorities:

"All processing of personal data by providers of electronic communications services falls within the scope of the Directive, including processing resulting from obligations imposed on them by public authorities. (point 101)

"national rules requiring providers of electronic communications services to retain traffic and location data for the purposes of protecting national security and combating crime, such as those at issue in the main proceedings, fall within the scope of Directive 2002/58". (point 104)

Application of ePrivacy Directive in the context of criminal investigations

- Prohibition of general and indiscriminate collection of data:
 - legislative measures providing, for the purposes set out in Article 15(1), as a preventive measure, for the general and undifferentiated retention of traffic data and location data.
 - national regulations requiring providers of access to online public communication services and providers of hosting services to retain personal data relating to these services on a general and undifferentiated basis.

Application of ePrivacy Directive in the context of criminal investigations

Scope: The *ePrivacy Directive* applies to data collection by law enforcement authorities when undertaken through a telecommunications service providers,

Reservation: the directive does not apply to measures implemented directly by Member States without imposing processing obligations on electronic communications service providers

Application of ePrivacy Directive in the context of criminal investigations

- Is it relevant to Encrochat, SKY ECC and ANOM cases?
- To answer this question, we should consider the investigative method used to collect the data.

Application to the Encrochat, SKY ECC and ANOM Cases

- The French authorities have undertaken the data collection **directly**, without going through a telecommunications service provider.
- Two consequences:
 - The *ePrivacy Directive* does not apply to the Encrochat case
 - The rules laid down in Article 15 of Directive 2002/58/EC on privacy and electronic communications about prohibition of indiscriminate collection of data, do not apply here.

Articulation between ePrivacy and LED Directive

In « *La Quadrature du Net* » 6 October 2020, C-511/18, the Court poses the principle of articulation between the two directives:

where a national measure does not fall within the scope of the ePrivacy Directive (*i.e. “where the MS directly implement measures that derogate from the rule that electronic communications are to be confidential, without imposing processing obligations on providers of electronic communications services”*), **the protection of the data of the persons concerned is governed by national law alone, subject to the application of Directive 2016/680 (LED Directive) and the ECHR requirements.** (see point 103)

Articulation between ePrivacy and LED Directives

Is the Law Enforcement Directive of 2016 applicable to the SKY
ECC and ENCROCHAT cases?

Scope of the LED Directive

- Article 1 of the LED Directive

*This Directive lays down the rules relating to the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the **prevention, investigation, detection or prosecution of criminal offences** or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.'*

Competent authorities: "any public authority competent for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties" (Article 3)

Scope of the LED Directive

- Article 2 of the LED Directive

"1. This Directive applies to the processing of personal data by competent authorities for the purposes set out in Article 1(1).

*2. This Directive applies to the **processing of personal data wholly or partly by automated means**, and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system."*

Scope of the LED Directive

- Article 2 of the LED Directive

Processing of personal data:

*“processing” means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as **collection**, recording, organisation, structuring, **storage**, adaptation or alteration, retrieval, **consultation**, **use**, **disclosure by transmission**, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;”*

Application of the LED Directive in the context of Encrochat, SKY ECC, ANOM

- ECJ (Grand Chamber), 4 October 2024, *CG v. Bezirkshauptmannschaft Landeck*, C-548/21 :

Point 72: *“where the police seize a telephone and handle it with a view to extracting and consulting personal data contained therein, they begin processing within the meaning of Article 3(2) of Directive 2016/680, even if they do not, for technical reasons, succeed in accessing those data.”*

Application of the LED Directive in the context of Encrochat, SKY ECC, ANOM

- ECJ (Grand Chamber), 4 October 2024, *CG v. Bezirkshauptmannschaft Landeck*, C-548/21 :

Conclusion of the ECJ (point 77) : *"It follows from the foregoing that an attempt by the police to access the data contained in a mobile telephone for the purposes of a criminal investigation, such as that at issue in the main proceedings, falls (...) within the scope of Directive 2016/680."*

Application of the LED Directive in the context of Encrochat, SKY ECC, ANOM

Application of the LED Directive to an attempt to access data contained in a mobile telephone for the purposes of a criminal investigation

As a consequence, the access, collection and storage of millions of data contained in thousands of phones is a processing of data within the meaning of the LED Directive and the LED Directive is applicable to the SKY ECC and Encrochat cases.

Consequences of the application of the LED Directive

Principles relating to processing of personal data

Recital 104:

*"(104) This Directive respects the fundamental rights and observes the principles recognised by the Charter, as enshrined in the Treaty on the Functioning of the European Union, and in particular **the right to respect for private and family life**, the right to the protection of personal data and the right to an effective remedy and to a fair trial. Limitations on these rights comply with Article 52(1) of the Charter because they are necessary to meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others."*

Principles relating to processing of personal data

Article 4 of the LED Directive :

“Member States shall provide for personal data to be:

*(a) processed **lawfully and fairly**;*

*(b) collected for **specified, explicit and legitimate purposes** and not processed in a manner that is incompatible with those purposes;*

*(c) **adequate, relevant and not excessive** in relation to the purposes for which they are processed;*

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data which are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which it is processed;

(f) processed in such a way as to ensure appropriate security of personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.”

Consequences of the application of the LED Directive

Principles relating to processing of personal data

Article 8 of the LED Directive - *Lawfulness of processing*

*"1. Member States shall provide for processing to be lawful only if and to the extent that processing is **necessary for the performance of a task carried out by a competent authority** for the purposes set out in Article 1(1) and that it is based on Union or Member State law.*

*2. Member State law regulating processing within the scope of this Directive shall specify at least **the objectives of processing, the personal data to be processed and the purposes of the processing.***

Consequences of the application of the LED Directive

Principles relating to processing of personal data

Member States must ensure that:

- personal data is processed lawfully i.e. if processing is necessary for the performance of a task for the purposes of prevention, investigation or prosecution of criminal offences (Article 8)
- collected and processed for specified, non-excessive purposes (Article 4).

Application to the ENCROCHAT and SKY ECC cases

Is the collection of ENCROCHAT and SKY ECC data lawful i.e. necessary to prosecute the crime for which the processing of the data was authorized?

Is the collection of ENCROCHAT and SKY ECC data adequate and non-excessive to prosecute the crime for which the processing of the data was authorized?

Thank you !



Procedural Aspects of Bringing the Case to the Court of Justice of the European Union: Preliminary Reference Procedures

Maarja Pild-Freiberg
Riga, 2025



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Amendments to the Statute of the Court of Justice of the European Union

- **Article 267**

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings

- **Article 19 (1)**

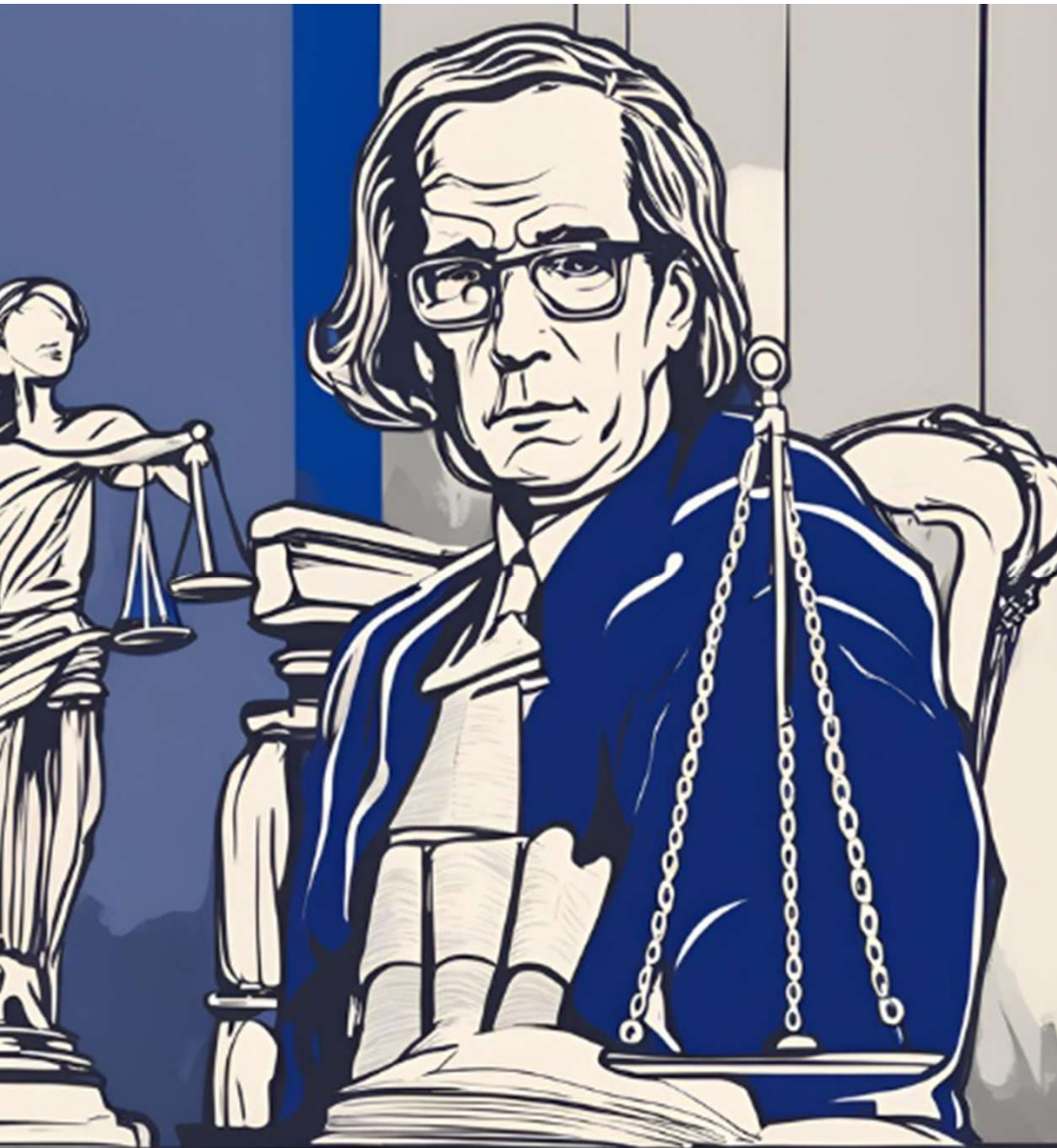
The Court of Justice of the European Union shall include the **Court of Justice**, the **General Court** and specialized courts.

Since 01.09.2024 jurisdiction is transferred from the Court of Justice to the General Court in cases that exclusively concern questions of EU law within one of the following areas:

- The common system of value added tax
- Excise duties
- The Customs Code
- The tariff classification of goods under the Combined Nomenclature
- Compensation and assistance to passengers in the event of denied boarding or of delay or cancellation of transport services
- The system for greenhouse gas emission allowance trading

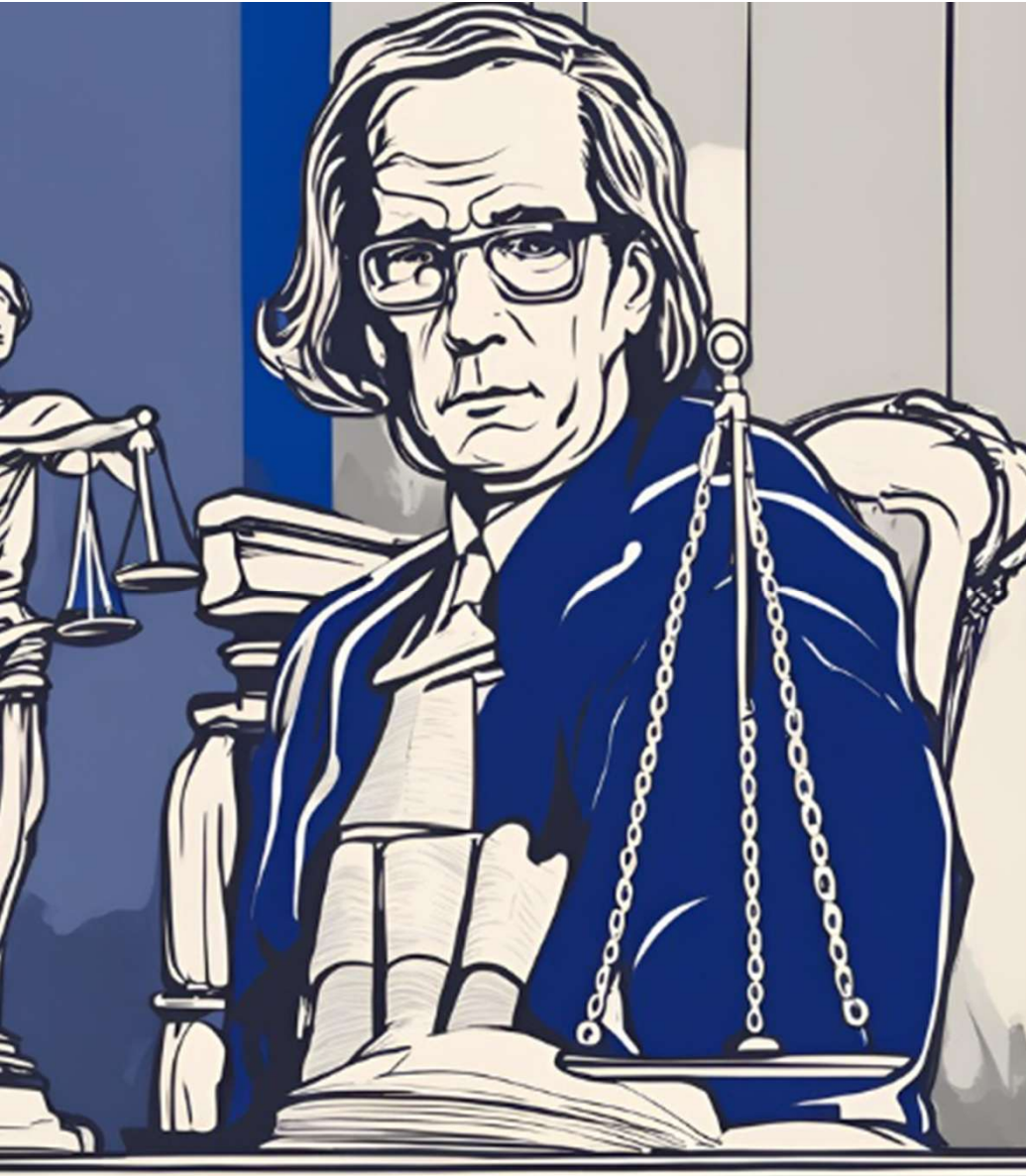


How can a national judge be persuaded to submit a request for a preliminary ruling to the Court of Justice of the European Union (CJEU)?



The legal necessity of persuading a national court to make a preliminary reference under Article 267 of the Treaty on the Functioning of the European Union (TFEU) and Article 19 of the Treaty on European Union (TEU).

- Pursuant to Article 267 (2) TFEU (Treaty on the Functioning of the European Union), only a **"court or tribunal"** of a Member State has the right to make a reference for preliminary ruling.



Court or tribunal?

- The CJEU interprets the terms "court or tribunal" as independent terms of Union law, irrespective of how they are construed on a national level.

Abrahamsson (*C-407/98*):

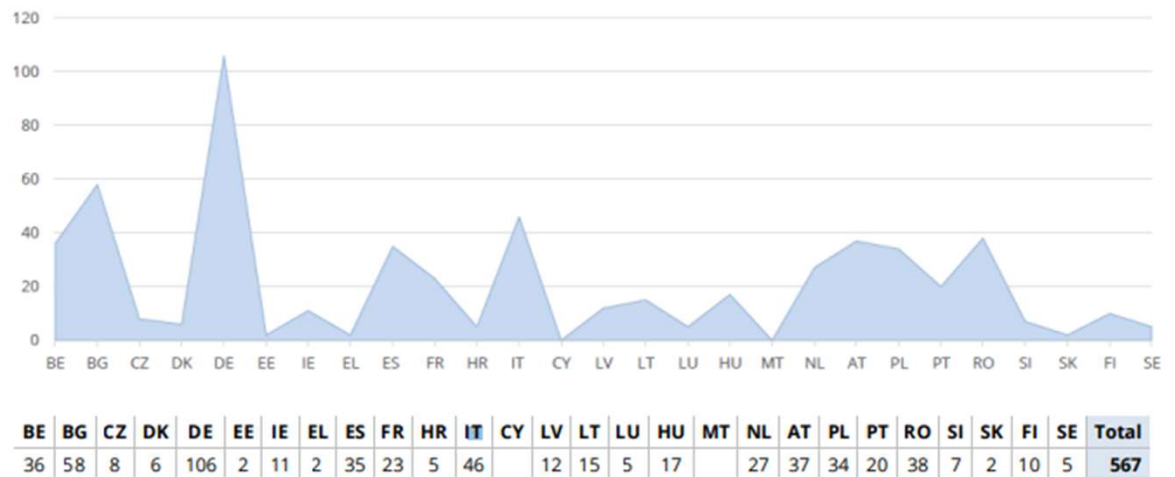
- (1) whether the referring body is **established by law**
- (2) whether the referring body is **permanent**,
- (3) whether the referring body's **jurisdiction is compulsory**;
- (4) whether the referring body **follows an adversarial procedure**;
- (5) whether the referring body **applies rules of law** (as opposed to mere ex aequo et bono adjudication),
- (6) whether **the referring body is independent**.

CJEU does not analyse whether the referring court actually has jurisdiction to hear the case under national law (*WWF*, *C-435/97*).

How often do national courts refer questions to the CJEU?

As regards references for a preliminary ruling, the number of cases brought in 2021 increased slightly (567 in 2021 compared to 556 in 2020). Those questions, which are referred from national courts of all the Member States of the European Union, show the excellent cooperation between those courts and the Court of Justice so that the Court of Justice may ensure, in particular, the uniform interpretation and consistent application of EU law throughout the European Union. In 2021, the highest number of requests for a preliminary ruling to the Court of Justice were made, respectively, by the German (106), Bulgarian (58), Italian (46), Romanian (38), Austrian (37), Belgian (36), Spanish (35) and Polish (34) courts. In particular, the increase in the number of references for a preliminary ruling from the courts and tribunals of Bulgaria (58 in 2021 compared to 28 in 2020) and of Romania (38 in 2021 compared to 20 in 2020) was particularly significant.

References for a preliminary ruling to the Court of Justice from the courts of the Member States (2021)



Number of references

References for a preliminary ruling by Member State	2020	2021	2022	2023	2024	Total
Belgium	36	36	30	30	36	168
Bulgaria	28	58	43	51	38	218
Czech Republic	9	8	13	12	14	56
Denmark	6	6	4	5	1	22
Germany	140	106	98	94	66	504
Estonia	3	2	4	4	4	17
Ireland	5	11	14	2	16	48
Greece	2	2	4	6	5	19
Spain	30	35	41	32	30	168
France	21	23	23	19	25	111
Croatia	4	5	4	4	7	24
Italy	44	46	63	43	98	294
Cyprus	0	0	0	1	1	2
Latvia	17	12	4	15	10	58
Lithuania	7	15	6	6	10	44
Luxembourg	3	5	2	2	12	24
Hungary	18	17	20	18	21	94
Malta	0	0	0	2	0	2
Netherlands	18	27	28	21	19	113
Austria	50	37	34	23	39	183
Poland	41	34	39	48	47	209
Portugal	17	20	28	13	16	94
Romania	20	38	29	40	28	155
Slovenia	2	7	0	6	4	19
Slovakia	6	2	7	8	9	32
Finland	7	10	6	5	4	32
Sweden	6	5	2	8	13	34
United Kingdom	17	0	0	0	0	17
Total	557	567	546	518	573	2 761

XXIII. General trend in the work of the Court (1952-2024) –
New references for a preliminary ruling by Member State and by court or tribunal

Member State	Court or tribunal	Number of references	Total
Belgium	Cour constitutionnelle	45	1 095
	Cour de cassation	126	
	Conseil d'État	129	
	Other courts or tribunals	795	
Bulgaria	Върховен касационен съд	12	379
	Върховен административен съд	54	
	Other courts or tribunals	313	
Czech Republic	Nejvyšší soud	19	130
	Nejvyšší správní soud	57	
	Other courts or tribunals	54	
Denmark	Højesteret	39	218
	Other courts or tribunals	179	
Germany	Bundesverfassungsgericht	2	3 145
	Bundesgerichtshof	312	
	Bundesverwaltungsgericht	165	
	Bundesfinanzhof	369	
	Bundesarbeitsgericht	71	
	Bundessozialgericht	78	
	Other courts or tribunals	2 148	
Estonia	Riigikohus	23	47
	Other courts or tribunals	24	
Ireland	Supreme Court	55	173
	High Court	77	
	Other courts or tribunals	41	
Greece	Άρειος Πάγος	14	209
	Συμβούλιο της Επικρατείας	70	
	Ελεγκτικό Συνεδριο	3	
	Other courts or tribunals	122	
Spain	Tribunal Constitucional	1	759
	Tribunal Supremo	133	
	Other courts or tribunals	625	
France	Conseil constitutionnel	1	1 160
	Cour de cassation	176	
	Conseil d'État	183	
	Other courts or tribunals	800	
Croatia	Ustavni sud	1	48
	Vrhovni sud	2	
	Other courts or tribunals	45	

>>>

Member State	Court or tribunal	Number of references	Total
Italy	Corte Costituzionale	9	1 877
	Corte suprema di Cassazione	210	
	Consiglio di Stato	299	
	Other courts or tribunals	1 359	
Cyprus	Ανώτατο Δικαστήριο	4	11
	Other courts or tribunals	7	
Latvia	Satversmes tiesa	10	135
	Augstākā tiesa (Senāts)	86	
	Other courts or tribunals	39	
Lithuania	Konstitucinis Teismas	2	112
	Aukščiausiasis Teismas	33	
	Vyriausiasis administracinis teismas	50	
	Other courts or tribunals	27	
Luxembourg	Cour constitutionnelle	1	126
	Cour de cassation	43	
	Cour administrative	21	
	Other courts or tribunals	61	
Hungary	Kúria	44	301
	Fővárosi Ítéletábla	8	
	Szegedi Ítéletábla	5	
	Other courts or tribunals	244	
Malta	Qorti Kostituzzjonali	1	6
	Other courts or tribunals	5	
Netherlands	Hoge Raad	320	1 184
	Raad van State	152	
	Centrale Raad van Beroep	72	
	College van Beroep voor het Bedrijfsleven	176	
	Tariefcommissie	35	
	Other courts or tribunals	429	
Austria	Verfassungsgerichtshof	4	776
	Oberster Gerichtshof	189	
	Verwaltungsgerichtshof	146	
	Other courts or tribunals	437	
Poland	Trybunał Konstytucyjny	1	406
	Sąd Najwyższy	68	
	Naczelny Sąd Administracyjny	74	
	Other courts or tribunals	263	
Portugal	Tribunal Constitucional	1	297
	Supremo Tribunal de Justiça	22	
	Supremo Tribunal Administrativo	98	
	Other courts or tribunals	176	
Romania	Curtea Constituțională	1	366
	Înalta Curte de Casație și Justiție	37	
	Curtea de Apel	195	
	Other courts or tribunals	133	

Requests for an expedited procedure ¹

Requests for an expedited procedure	2020	2021	2022	2023	2024	Total
References for a preliminary ruling	40	56	35	29	47	207
Direct actions	0	3	0	0	1	4
Appeals	2	1	2	2	1	8
Appeals concerning interim measures or interventions	0	0	1	0	0	1
Total	42	60	38	31	49	220

Requests for an expedited procedure – outcome ²

Outcome	2020	2021	2022	2023	2024	Total
Granted	3	5	0	0	6	14
Not granted	34	57	31	19	26	167
Not acted upon ³	3	2	5	8	4	22
Decision pending	8	4	6	10	23	51
Total	48	68	42	37	59	254

Requests for the urgent preliminary ruling procedure to be applied ¹

Requests for the urgent preliminary ruling procedure to be applied	2020	2021	2022	2023	2024	Total
Judicial cooperation in civil matters	2	1	1	0	0	4
Judicial cooperation in criminal matters	8	8	6	3	8	33
Borders, asylum and immigration	6	8	2	4	19	39
Others	1	14	5	3	0	23
Total	17	31	14	10	27	99

Requests for the urgent preliminary ruling procedure to be applied – outcome ²

Outcome	2020	2021	2022	2023	2024	Total
Granted	11	9	7	2	6	35
Not granted	8	20	8	8	20	64
Not acted upon ³	0	1	0	0	2	3
Decision pending	0	1	0	0	0	1
Total	19	31	15	10	28	103

What are the main arguments for convincing a national court to make a preliminary reference to the CJEU?

In line with Article 267 TFEU, a preliminary reference may be submitted if two premises are met jointly:

- (1) a question of EU law is raised before a national court and
- (2) a decision on that question is necessary for the national court to give judgment on the case at hand



What are the main arguments for convincing a national court to make a preliminary reference to the CJEU?

Preliminary reference may be a must

CILFIT (283/81). *Acte clair* doctrine. Para 16:

- ¹⁶ Finally, the correct application of Community law may be so obvious as to leave no scope for any reasonable doubt as to the manner in which the question raised is to be resolved. Before it comes to the conclusion that such is the case, the national court or tribunal must be convinced that the matter is equally obvious to the courts of the other Member States and to the Court of Justice. Only if those conditions are satisfied, may the national court or tribunal refrain from submitting the question to the Court of Justice and take upon itself the responsibility for resolving it.



What are the main arguments for convincing a national court to make a preliminary reference to the CJEU?

No need if:

- There is no reasonable doubt about interpretation;
- Question is irrelevant;

CILFIT (283/81), question has been answered/dealt with, para 14:

- ¹⁴ The same effect, as regards the limits set to the obligation laid down by the third paragraph of Article 177, may be produced where previous decisions of the Court have already dealt with the point of law in question, irrespective of the nature of the proceedings which led to those decisions, even though the questions at issue are not strictly identical.



What are the main arguments for convincing a national court to make a preliminary reference to the CJEU?

preliminary reference may be a must
CILFIT (283/81), Lyckeskog (C-99/00):

“Decisions of a national appellate court which can be challenged by the parties before a supreme court are not decisions of a ‘court or tribunal of a Member State against whose decisions there is no judicial remedy under national law’ within the meaning of Article 234 EC. The fact that examination of the merits of such appeals is subject to a prior declaration of admissibility by the supreme court does not have the effect of depriving the parties of a judicial remedy.”



What may encourage a national judge to make a reference to the CJEU?

Bringing up the issue by a representative of one of the parties



What may encourage a national judge to make a reference to the CJEU?

- Quality help to enforce the:

Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (C/2024/6008)

(2019/C 380/01)



Recommendations to national courts

(C/2024/6008)

ANNEX

The essential elements of a request for a preliminary ruling

Whether transmitted electronically or by post, all requests for a preliminary ruling must mention:

- (1) the identity of the court or tribunal making the reference and, where appropriate, the chamber or formation of the court or tribunal having jurisdiction (see, in that respect, paragraphs 3 to 7);
- (2) the precise identity of the parties to the main proceedings and of anyone representing them before the referring court or tribunal (with regard to the parties to the main proceedings, see, however, paragraphs 21 and 22 of the present recommendations, in relation to the protection of personal data);
- (3) the subject matter of the dispute in the main proceedings and the relevant facts (see paragraph 15);
- (4) the relevant provisions of national law and of EU law (see paragraphs 15 and 16);
- (5) the reasons that prompted the referring court or tribunal to inquire about the interpretation or validity of EU law (see paragraphs 8 to 11 and 15 to 18);
- (6) the questions referred for a preliminary ruling (see paragraph 19) and, if applicable,
- (7) the possible need for specific treatment of the request, related, for example, to the particularly expeditious way in which the request should be dealt with by the Court of Justice or the General Court (see paragraph 40 et seq.).

Note of criteria selected:
Case number = C-340/19

Modify the search

List of results by case		List of documents					
5 documents(s)							
Case	Document	Date	Name of the parties	Subject-matter	Curia	EUR-Lex	Autres Liens
C-340/19	National decision following the preliminary ruling	10/07/2020					
C-340/19	Judgment (OJ)	31/07/2020	Hydro Energo	Free movement of goods - Customs union - Common Customs Tariff			
C-340/19	Judgment (Summary) ECLI:EU:C:2020:498	18/06/2020	Hydro Energo				
C-340/19	Judgment ECLI:EU:C:2020:498	18/06/2020	Hydro Energo	Free movement of goods - Customs union - Common Customs Tariff			
C-340/19	Application (OJ)	14/06/2019	Hydro Energo	Free movement of goods - Customs union - Common Customs Tariff			
C-340/19	Request for a preliminary ruling	29/04/2019	Hydro Energo	Free movement of goods - Customs union - Common Customs Tariff			

Translation

C-340/19 – 1

Case C-340/19,

Request for a Preliminary Ruling

Date lodged:

29 April 2019

Referring court:

Augstākā tiesa (Senāts) (Supreme Court, (Latvia))

Date of the decision to refer:

18 April 2019

Appellant in the appeal on a point of law:

Valsts ieņēmumu dienests

Respondent in the appeal on a point of law:

SIA 'Hydro Energo'

Latvijas Republikas Senāts (The Supreme Court of the Republic of Latvia)

DECISION

Riga, 18 April 2019

The Court [...] (composition of the referring court)

has examined, in the written procedure, the administrative proceedings initiated by the action brought by SIA 'Hydro Energo' seeking the annulment of the decision of 10 September 2014 adopted by the Valsts ieņēmumu dienests (State Tax Authority), and which now concern the appeal on a point of law brought by the State Tax Authority challenging the judgement of the Administratīvā apgabaltiesa (Regional Administrative Court) of 13 April 2017.

Background

Factual circumstances

What may encourage a national judge to make a reference to the CJEU?

The referral must be drafted **simply, clearly and precisely** given that it will need to be translated to allow other Member States to submit their observations.



Referral must be drafted “simply, clearly and precisely?” (C-107/23)

44 For those reasons, the Curtea de Apel Braşov (Court of Appeal, Braşov) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- (1) Should Article 2 TEU, the second [sub]paragraph of Article 19(1) TEU and Article 4(3) TEU, read in conjunction with Article 325(1) TFEU, Article 2(1) of the PFI Convention, Articles 2 and 12 of the PFI Directive and Directive [2006/112], with reference to the principle of effective and dissuasive penalties in cases of serious fraud affecting the financial interests of the European Union, and applying [Decision 2006/928], with reference to the last sentence of Article 49(1) of the [Charter], be interpreted as precluding a legal situation, such as that at issue in the main proceedings, in which the convicted appellants seek, by means of an extraordinary appeal, to set aside a final judgment in criminal proceedings and request the application of the principle of the more lenient criminal law, which they allege was applicable in the course of the substantive proceedings and which would have entailed a shorter limitation period that would have expired before the case was finally concluded, but which was revealed only subsequently, by a decision of the national Constitutional Court which declared unconstitutional legislation on interrupting the limitation period for criminal liability ([judgment No 358/2022 of the Curtea Constituţională (Constitutional Court)]), on the ground that the legislature had failed to act to bring the legislation in question into line with another decision of the same Constitutional Court delivered four years earlier ([judgment No 297/2018 of the Curtea Constituţională (Constitutional Court)]) – by which time the case-law of the ordinary courts formed in application of [that judgment No 297/2018] had already established that the legislation in question was still in force, in the form understood as a result of [that judgment No 297/2018] – with the practical consequence that the limitation period for all the offences in relation to which no final conviction had been handed down prior to [judgment No 297/2018 of the Curtea Constituţională (Constitutional Court)] is reduced by half and the criminal proceedings against the defendants in question are consequently discontinued?
- (2) Should Article 2 TEU, on the values of the rule of law and respect for human rights in a society in which justice prevails, and Article 4(3) TEU, on the principle of sincere cooperation between the European Union and the Member States, applying [Decision 2006/928] as regards the commitment to ensure the efficiency of the Romanian judicial system, with reference to the last sentence of Article 49(1) of the [Charter], which enshrines the principle of the more lenient criminal law, be interpreted, in relation to the national judicial system as a whole, as precluding a legal situation, such as that at issue in the main proceedings, in which the convicted appellants seek, by means of an extraordinary appeal, to set aside a final judgment in criminal proceedings and request the application of the principle of the more lenient criminal law, which they allege was applicable in the course of the substantive proceedings and which would have entailed a shorter limitation period that would have expired before the case was finally concluded, but which was revealed only subsequently, by a decision of the national Constitutional Court which declared unconstitutional legislation on interrupting the limitation period for criminal liability ([judgment No 358/2022 of the Curtea Constituţională (Constitutional Court)]), on the ground that the legislature had failed to act to bring the legislation in question into line with another decision of the same Constitutional Court delivered four years earlier ([judgment No 297/2018 of the Curtea Constituţională (Constitutional Court)]) – by which time the case-law of the ordinary courts formed in application of [that judgment No 297/2018] had already established that the legislation in question was still in force, in the form understood as a result of [that judgment No 297/2018] – with the practical consequence that the limitation period for all the offences in relation to which no final conviction had been handed down prior to [judgment No 297/2018 of the Curtea Constituţională (Constitutional Court)] is reduced by half and the criminal proceedings against the defendants in question are consequently discontinued?
- (3) If [the first and second questions are answered in the affirmative], and only if it is impossible to provide an interpretation in conformity with EU law, is the principle of the primacy of EU law to be interpreted as precluding national legislation or a national practice pursuant to which the ordinary national courts are bound by decisions of the national Constitutional Court and binding decisions of the national supreme court and may not, for that reason and at the risk of committing a disciplinary offence, of their own motion disapply the case-law resulting from those decisions, even if, in light of a judgment of the Court of Justice, they take the view that that case-law is contrary to Article 2 TEU, the second [sub]paragraph of Article 19(1) TEU and Article 4(3) TEU, read in conjunction with Article 325(1) TFEU, in application of [Decision 2006/928], with reference to the last sentence of Article 49(1) of the [Charter], as in the situation in the main proceedings?

Referral must be drafted simply, clearly and precisely? (C-107/23)

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Article 325(1) TFEU and Article 2(1) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Brussels on 26 July 1995 and annexed to the Council Act of 26 July 1995**

must be interpreted as meaning that the courts of a Member State are not required to disapply the judgments of the constitutional court of that Member State invalidating the national legislative provision governing the grounds for interrupting the limitation period in criminal matters, as a result of a breach of the principle that offences and penalties must be defined by law, as protected under national law, as to its requirements relating to the foreseeability and precision of criminal law, even if, as a consequence of those judgments, a considerable number of criminal cases, including cases relating to offences of serious fraud affecting the financial interests of the European Union, will be discontinued because of the expiry of the limitation period for criminal liability.

However, those provisions of EU law must be interpreted as meaning that the courts of that Member State are required to disapply a national standard of protection relating to the principle of the retroactive application of the more lenient criminal law (*lex mitior*) which makes it possible, including in the context of appeals brought against final judgments, to call into question the interruption of the limitation period for criminal liability in such cases by procedural acts which took place before such a finding of invalidity.

2. **The principle of the primacy of EU law**

must be interpreted as precluding national legislation or a national practice under which the ordinary national courts of a Member State are bound by the decisions of the constitutional court and by those of the supreme court of that Member State and cannot, for that reason and at the risk of incurring the disciplinary liability of the judges concerned, disapply of their own motion the case-law resulting from those decisions, even if they consider, in the light of a judgment of the Court, that that case-law is contrary to provisions of EU law having direct effect.

What may encourage a national judge to make a reference to the CJEU?

CARTESIO (C-210/06):

„the second paragraph of Article 234 EC is to be interpreted as meaning that the jurisdiction conferred by that provision of the Treaty on any national court or tribunal to make a reference to the Court for a preliminary ruling cannot be called into question by the application of those rules, where they permit the appellate court to vary the order for reference, to set aside the reference and to order the referring court to resume the domestic law proceedings.“




What may encourage a national judge to make a reference to the CJEU?

Failure to submit a preliminary reference, when the court was under a duty to do so, constitutes a violation of EU law and may lead to proceedings on the basis of Article 258 TFEU against the Member State!

See also Köbler, C-224/01; Traghetti, C-173/03 about the damages claim.





The urgent preliminary ruling procedure (PPU)

Urgent preliminary ruling procedure (Rules of Procedure the court art 107-114)

- A procedure applying only in cases involving questions relating to freedom, security and justice
- In particular, it limits the number of parties permitted to submit written observations and allows, in cases of extreme urgency, for the written stage of the procedure to be omitted before the CJEU



Urgent preliminary ruling procedure (Rules of Procedure the court art 107-114)

Reasons for the application of the urgent preliminary ruling procedure:

- Risk of deterioration of the parent/child relationship ((Aguirre Zarraga (C-491/10 PPU, EU:C:2010:828); Mercredi (C-497/10 PPU, EU:C:2010:829))
- Deprivation of liberty (Kadzoev (C-357/09 PPU, EU:C:2009:741); Bob-Dogi (C-241/15, EU:C:2016:385))
- Risk of interference with fundamental rights (C. K. and Others (C-578/16 PPU, EU:C:2017:127))



Do not forget about expedited procedure (Rules of Procedure the court art 105-106)

- A procedure where the nature and exceptional circumstances of the case require it to be handled quickly
- An expedited procedure must be sought only when particular circumstances create an emergency that warrants a quick CJEU ruling on the questions referred
- This could arise, for example, if there is a serious and immediate danger to public health or to the environment, which a prompt decision by the CJEU might help to avert, or if particular circumstances require uncertainties concerning fundamental issues of national constitutional law and of EU law to be resolved within a very short time

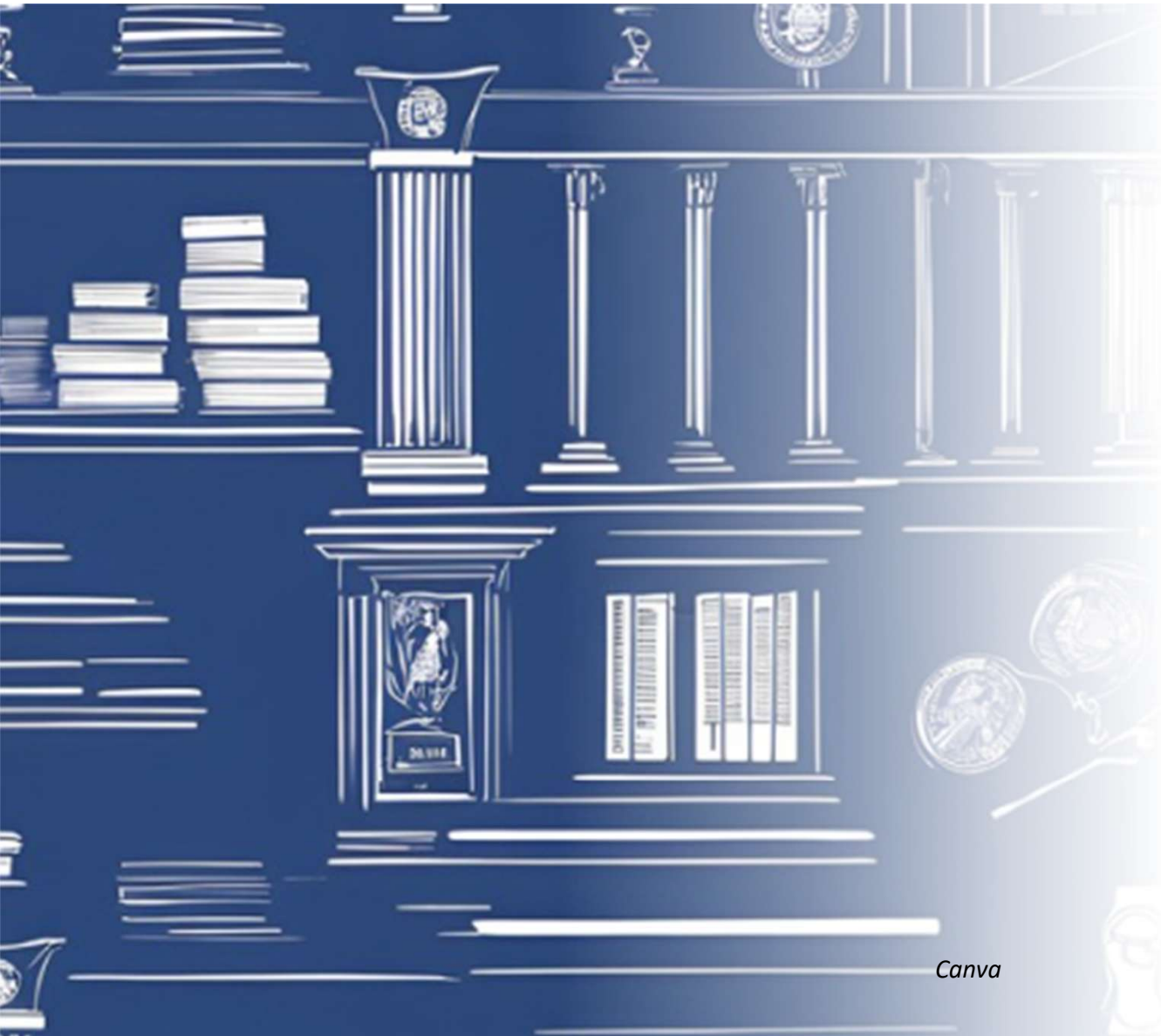


Expedited procedure (Rules of Procedure the court art 105-106)

Reasons for the application of
the expedited preliminary
ruling procedure:

- Particular severity of the legal uncertainty to which the reference for a preliminary ruling relates (Wightman and Others (C-621/18, EU:C:2018:851))
- Risk of serious environmental damage





Canva

The written observations

Written observations

- Rules of Procedure of the Court of Justice, Chapter V (*amended 2024*)
- STATUTE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION (*amended 2024*)
- PRACTICE DIRECTIONS TO PARTIES CONCERNING CASES BROUGHT BEFORE THE COURT (*amended 2024*)
- DECISION OF THE COURT OF JUSTICE of 4 September 2024 on the lodging and service of procedural documents by means of e-Curia



Technical requirements and practical recommendations for parties and representatives making oral submissions by videoconference

September 2024

This document has been drawn up jointly by the Registries of the Court of Justice and of the General Court, the Interpretation Directorate and the Information Technology Directorate of the Court of Justice of the European Union, and is intended for parties and representatives who wish to participate in a hearing by videoconference. It sets out the necessary technical requirements for videoconferencing (I) and contains some essential practical recommendations for those parties and representatives for the preparation and proper conduct of such hearings (II).

I. TECHNICAL REQUIREMENTS

The use of videoconferencing for hearings is possible only if certain technical requirements are met. It is therefore very important to follow the instructions set out in this document.

Technical equipment required

1. Only connections using **H.323, SIP or WebRTC protocols** are permitted. H.323, SIP and WebRTC are protocols that are used specifically to set up videoconference calls and enable the stability and optimal security of connections;

3. The use of a unidirectional **microphone** is advised. This type of microphone picks up sound coming mainly from one direction and will reduce ambient sound and improve the quality of the audio signal that is sent to the various participants in the hearing and to interpreters where use is made of simultaneous interpretation.

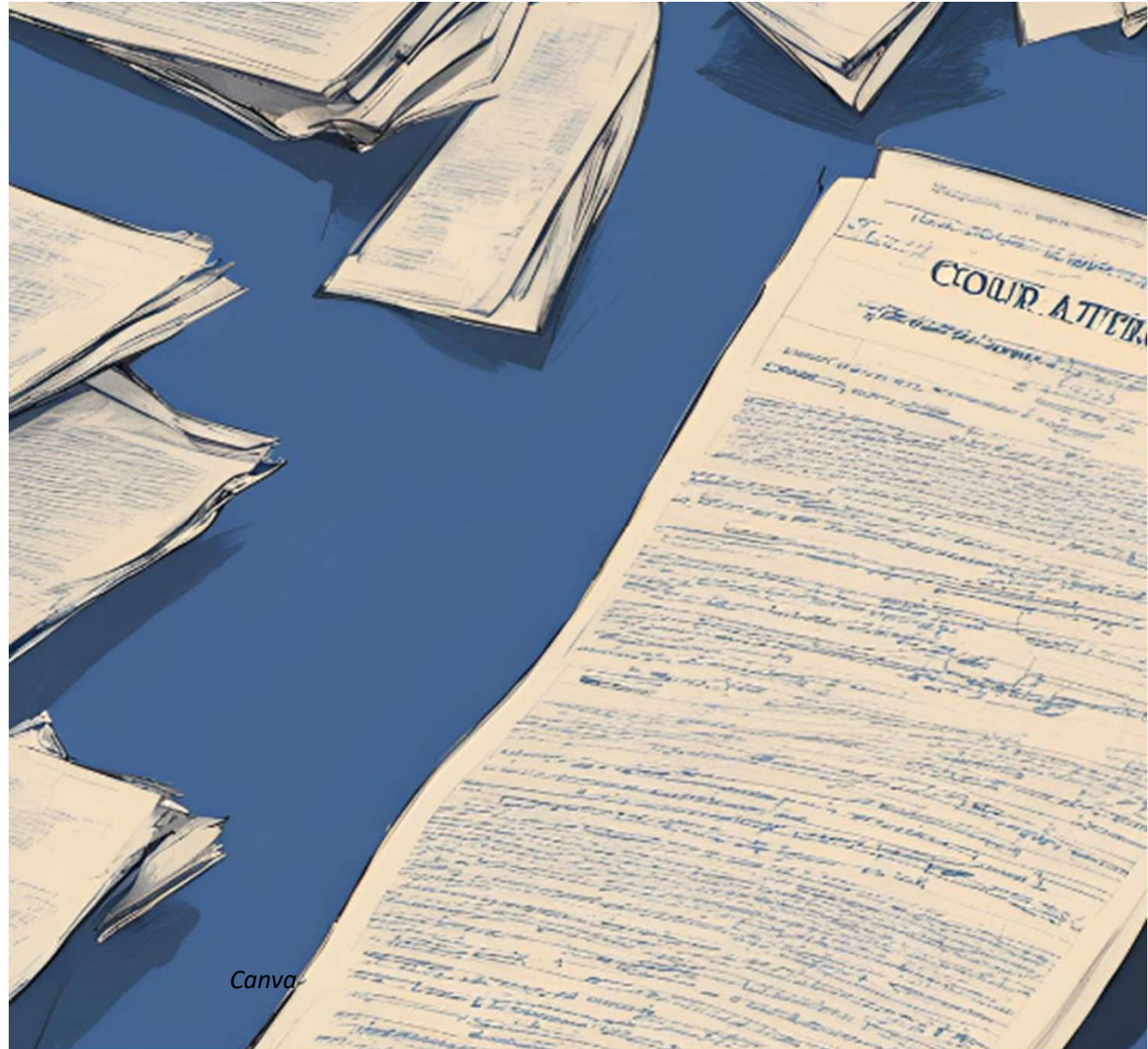


4. The party or representative making oral submissions remotely should be positioned in relation to the camera in such a way that his or her **upper body and face** can be seen, as in the image shown below. The use of a **lectern** is advised. It is very important to avoid camera angles that are too high or too low. The **background** must be as neutral as possible.



Written observations: E-Curia

- The Court's recommended method of lodging a procedural document is via the e-Curia application. This allows the lodging and service of procedural documents by exclusively electronic means, without it being necessary to provide certified copies of the document transmitted to the Court or to duplicate that transmission by sending the document by post. (see DECISION OF THE COURT OF JUSTICE of 4 September 2024 on the lodging and service of procedural documents by means of e-Curia)
- Use of the e-Curia application is mandatory in the General Court.



Written observations

- Article 23 (Statute of the Court) within two months of a notification from the Court, the parties, the Member States, the Commission and, where appropriate, the institution, body, office or agency which adopted the act the validity or interpretation of which is in dispute, shall be entitled to submit statements of case or written observations to the Court
- Where a request for a preliminary ruling is served on them by the Court, those persons may thus submit, if they wish, written observations in which they set out their point of view on the request made by the referring court or tribunal



Written observations

- Although the statement must be complete and include, in particular, the arguments on which the Court may base its answer to the questions referred, it is not necessary, on the other hand, to repeat the factual and legal background of the dispute set out in the order for reference, unless it requires further comment
- Subject to special circumstances or specific provisions of the Rules of Procedure providing for a restriction of the length of the documents because of the urgency of the case, written observations lodged in a preliminary ruling should not exceed 20 pages





The oral phase

Logistics

- Please be advised that the security check may take some time
- Not all security personnel may speak English

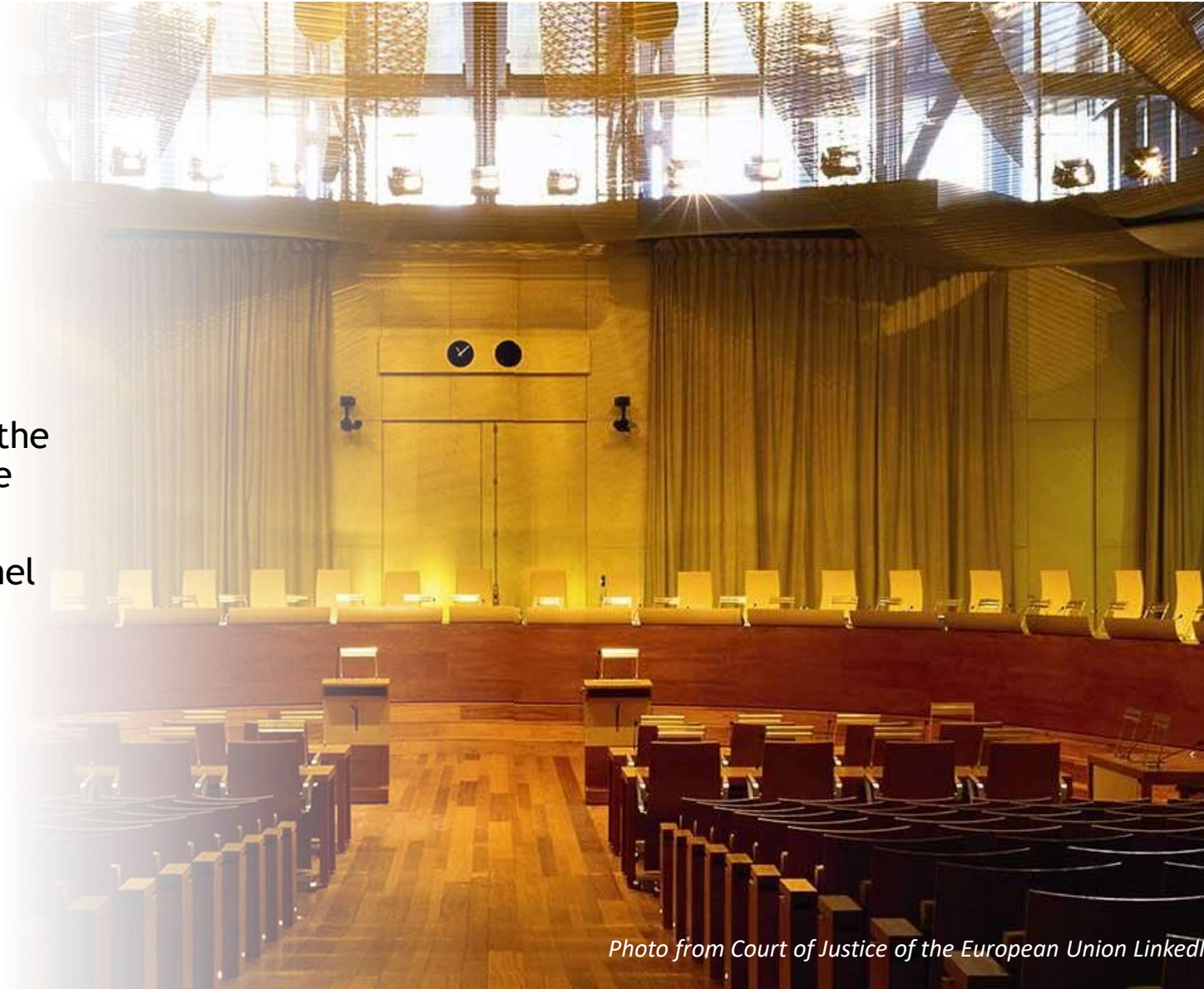


Photo from Court of Justice of the European Union Linked

Clothing

What is the required attire?

Representatives are required—subject to applicable exceptions—to present oral argument in proper court dress, standing behind the lectern provided for that purpose. Each representative must bring his or her own gown.

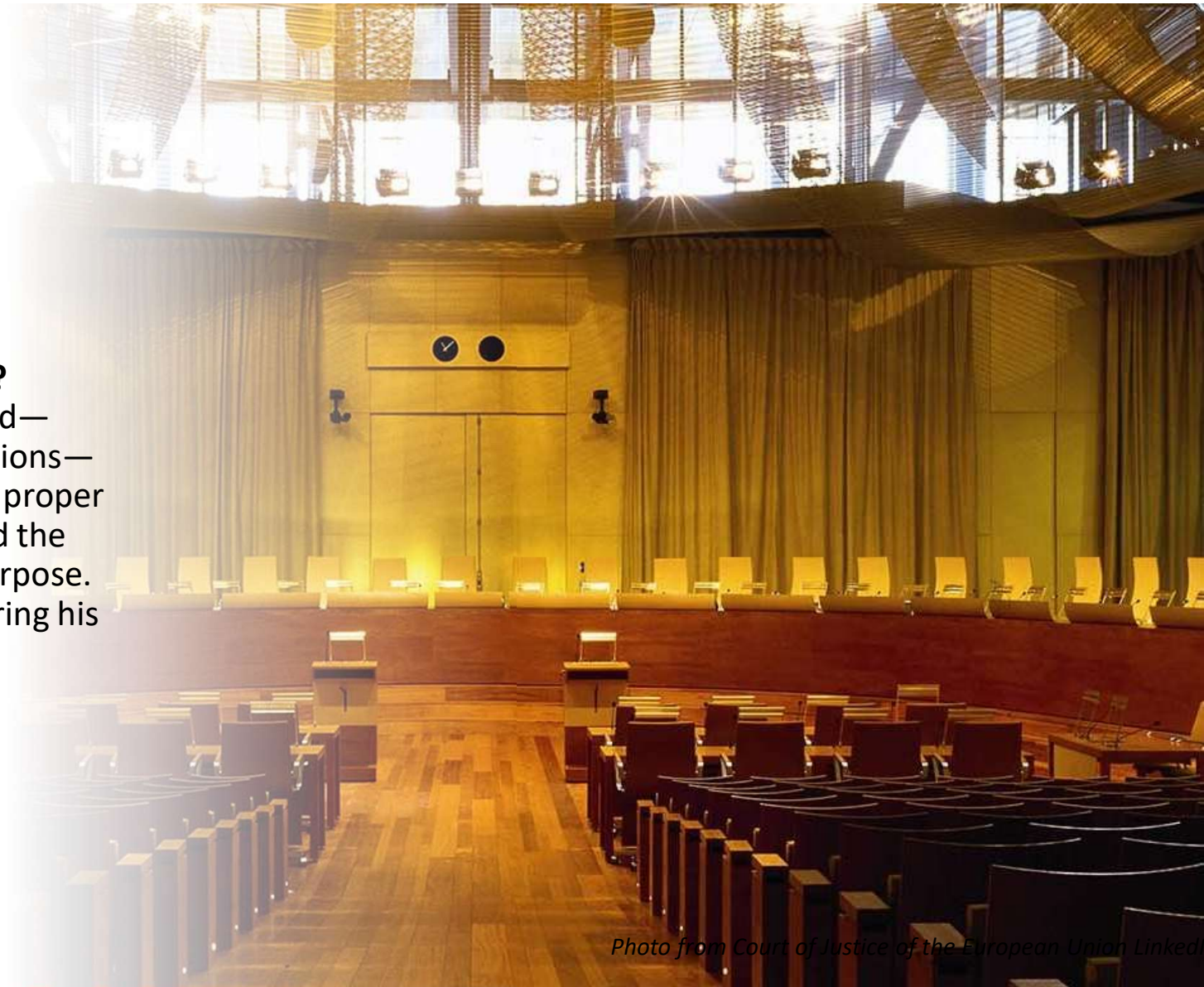


Photo from Court of Justice of the European Union [Linked](#)



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 63/22

Luxembourg, 22 April 2022

Broadcast by streaming of hearings and the handing down of judgments and opinions of the Court of Justice

In order to facilitate the public's access to its judicial activity, the Court of Justice of the European Union will offer a streaming service with effect from 26 April.

The delivery of judgments of the Court of Justice and the reading of Advocate Generals' opinions will be **broadcast live** on its website. That broadcast, which at this stage will only include cases assigned to the Grand Chamber, will be made from the start of hearings for the delivery of judgments, in accordance with the timetable provided in the [judicial calendar](#).

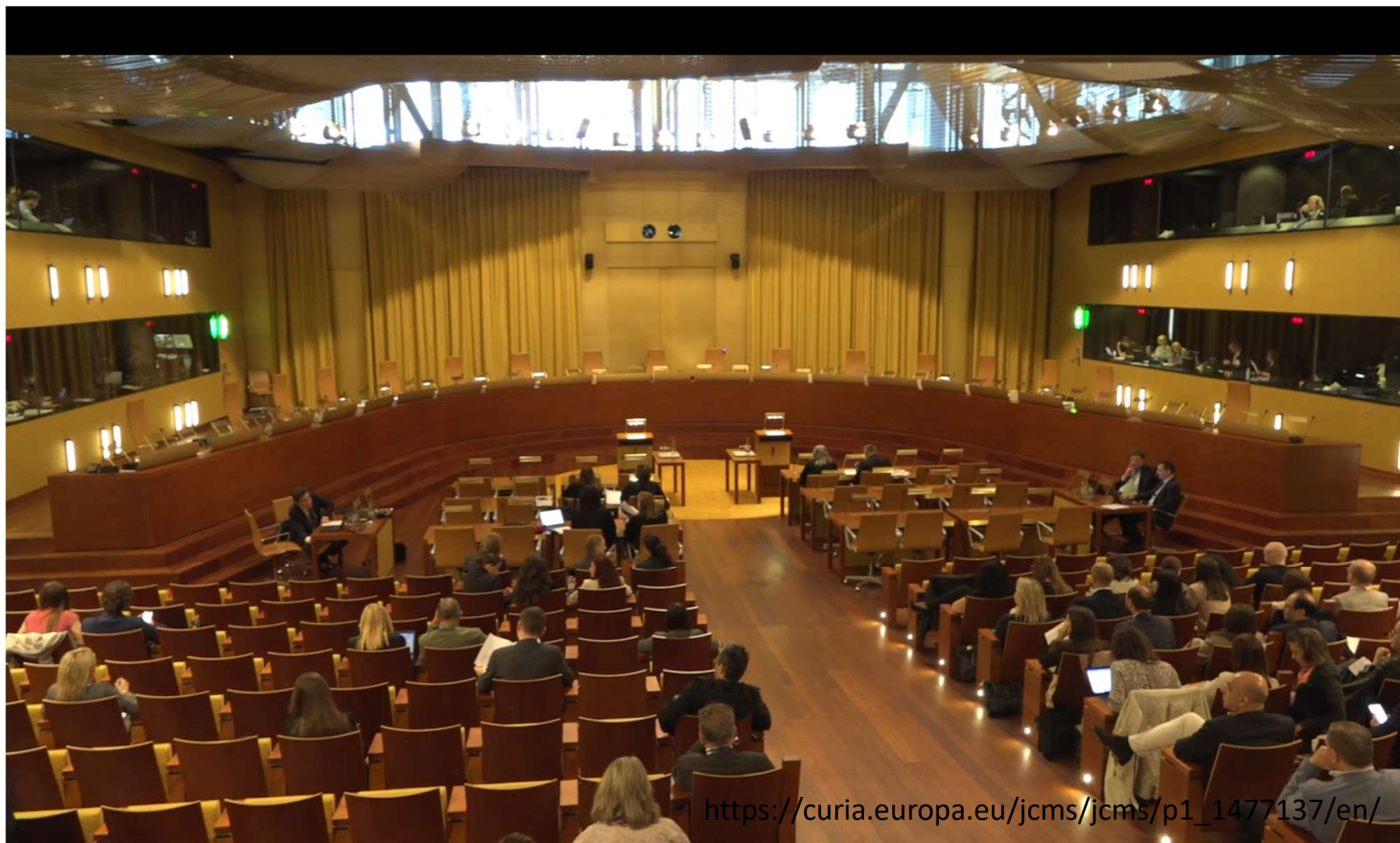
The hearings in cases assigned to the Grand Chamber of the Court of Justice will also, in principle, be the subject of a **later broadcast** for a pilot period of 6 months. It will be possible to view the hearings either on the same day from 14.30pm (for hearings that took place that morning), or the following day from 9.30am (for hearings that are held in the afternoon), but it will not be possible to consult them subsequently.

These broadcasts are designed so as to allow citizens to follow hearings under the same conditions as if they were physically present. Viewers will therefore benefit from the simultaneous interpretation of the pleadings in the languages necessary for the proper conduct of the hearing.

Preparation for the oral rounds



Preparation for the oral rounds



https://curia.europa.eu/jcms/jcms/p1_1477137/en/

Hearing and the pleading

- Where the defendant is a Member State, the language of the case shall be the official language of that State
- Speakers standing behind the lectern must always use the microphone; it can be switched on and off using the button at the base of the microphone. For the purpose of providing simultaneous interpretation, speakers are advised to speak slowly
- If you do decide to read out a written text which you have prepared, please send it if possible, in advance to the Interpretation Directorate by email (interpret@curia.europa.eu). This will help the interpreters to prepare for the hearing

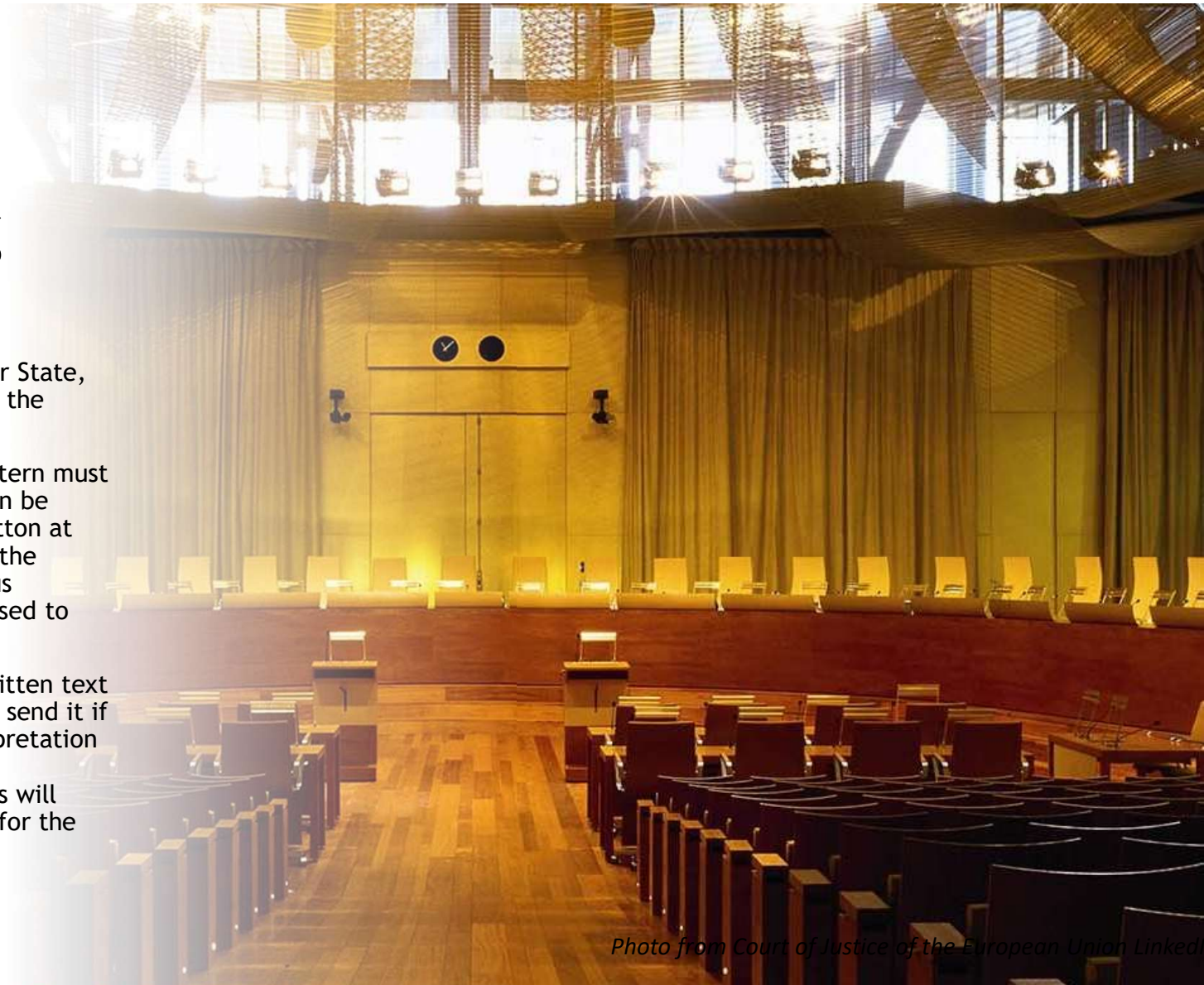


Photo from Court of Justice of the European Union Linked

Hearing and the pleading

Do not exceed the time allowed for opening argument as indicated in the letter of notice to attend the hearing

As a general rule, the speaking time is fixed at 15 minutes. However, that time may be made longer or shorter depending on the nature or the specific complexity of the case

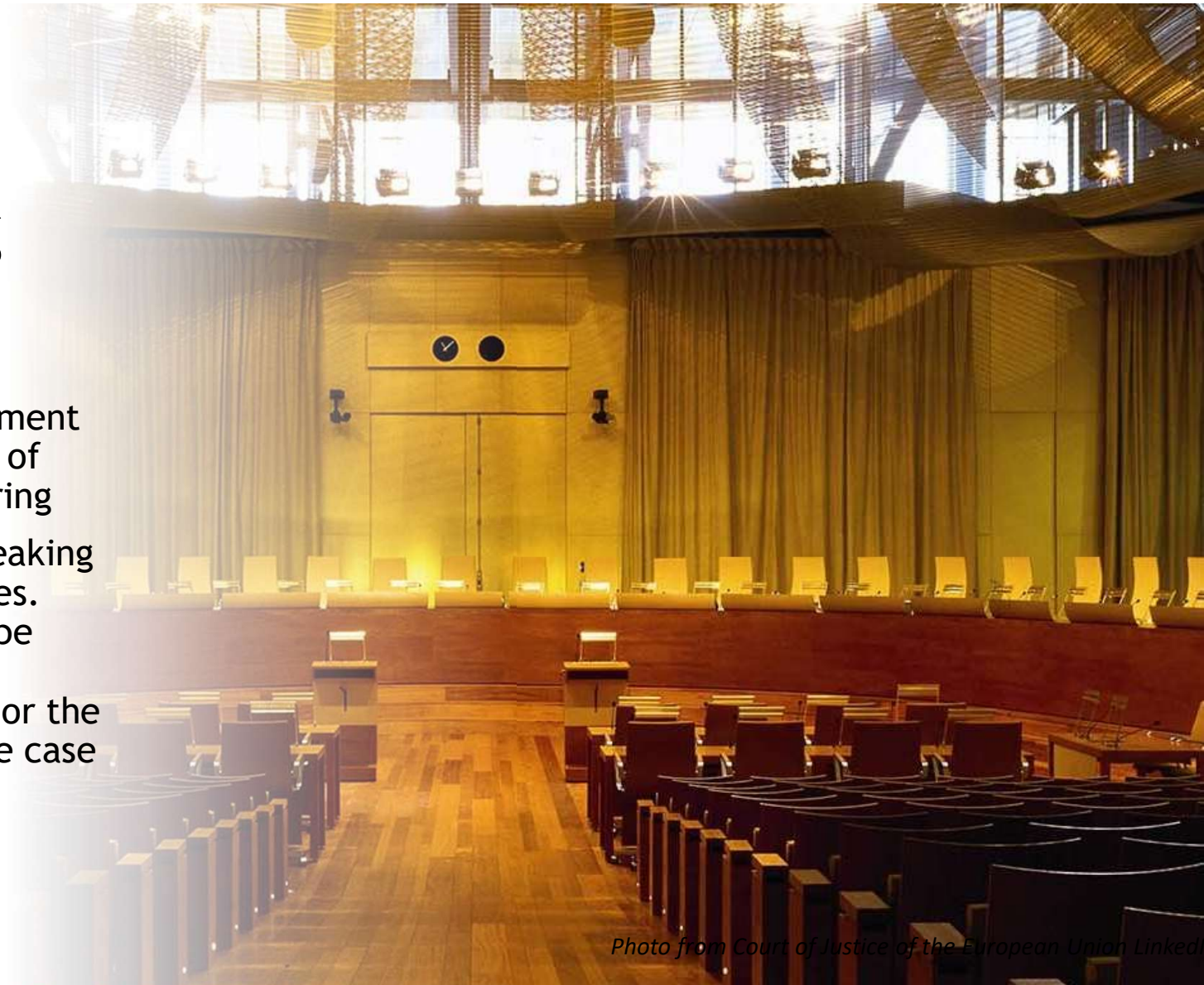


Photo from Court of Justice of the European Union [Linked](#)

Other remarks related to the preparation

- The Judges meet the parties' representatives, wearing court dress, 5 to 10 minutes before the hearing begins
- Be ready for the questions.
- Additional questions from the members of the Court
- Get to know the judges!

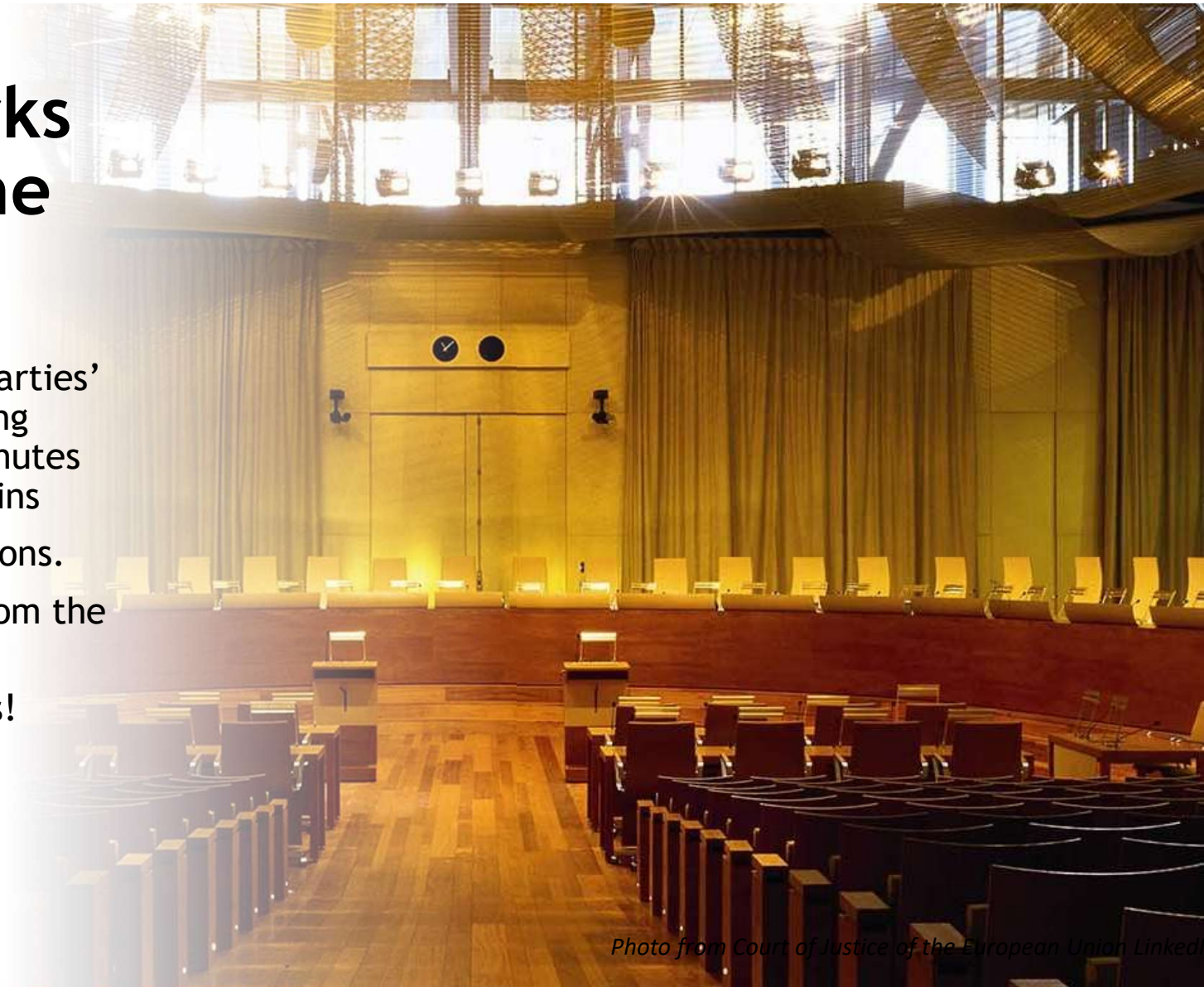
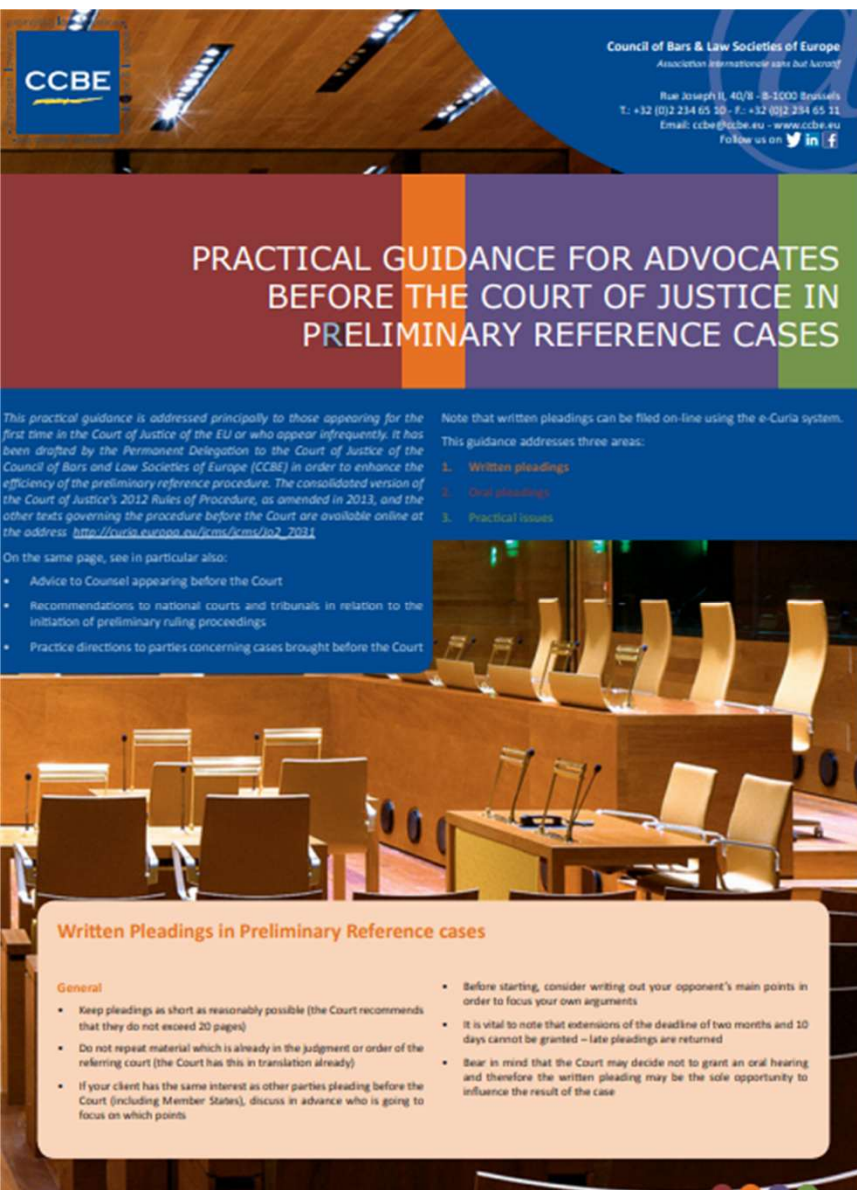
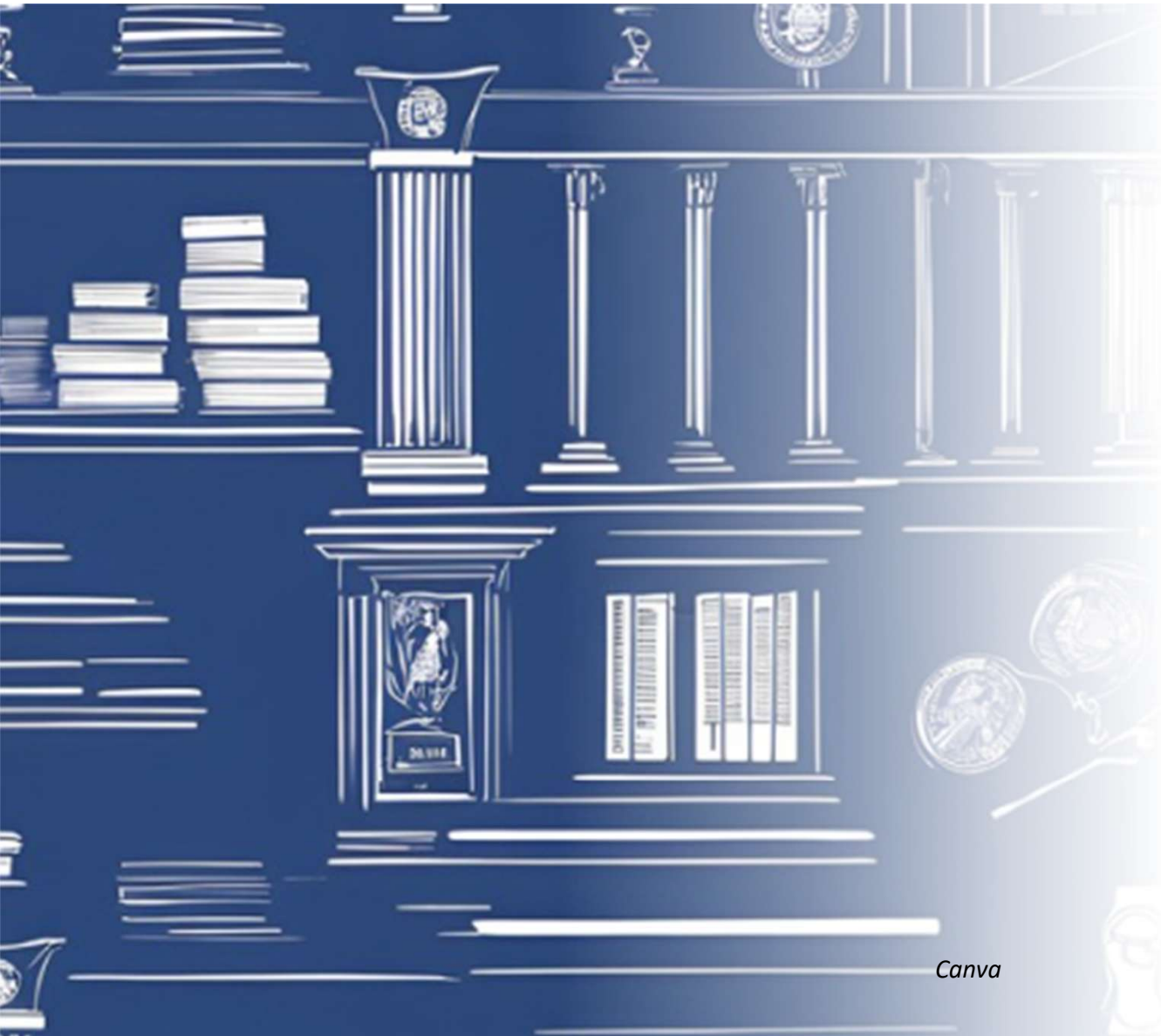


Photo from Court of Justice of the European Union [Linked](#)



CCBE practical guidance

https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/PD_LUX/PDL_Guides_recommendations/EN_PD_L_20150909_Practical-Guidance-for-Advocates-before-the-Court-of-Justice-in-Preliminary-Reference-cases.pdf



Admissibility issues

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Inadmissibility

Rules of Procedure of the Court of Justice Article 53(2) state that where it is clear that:

- 1) the Court has no jurisdiction to hear and determine a case or
- 2) where a request or an application is manifestly inadmissible,

the Court may, after hearing the Advocate General, at any time decide to give a decision by reasoned order without taking further steps in the proceedings



Application is manifestly inadmissible

- Significant proportion of requests are rejected by the Court of Justice
- The main reasons for inadmissibility - ill-drafting, basing preliminary reference on misconceptions about EU law



Application is manifestly inadmissible

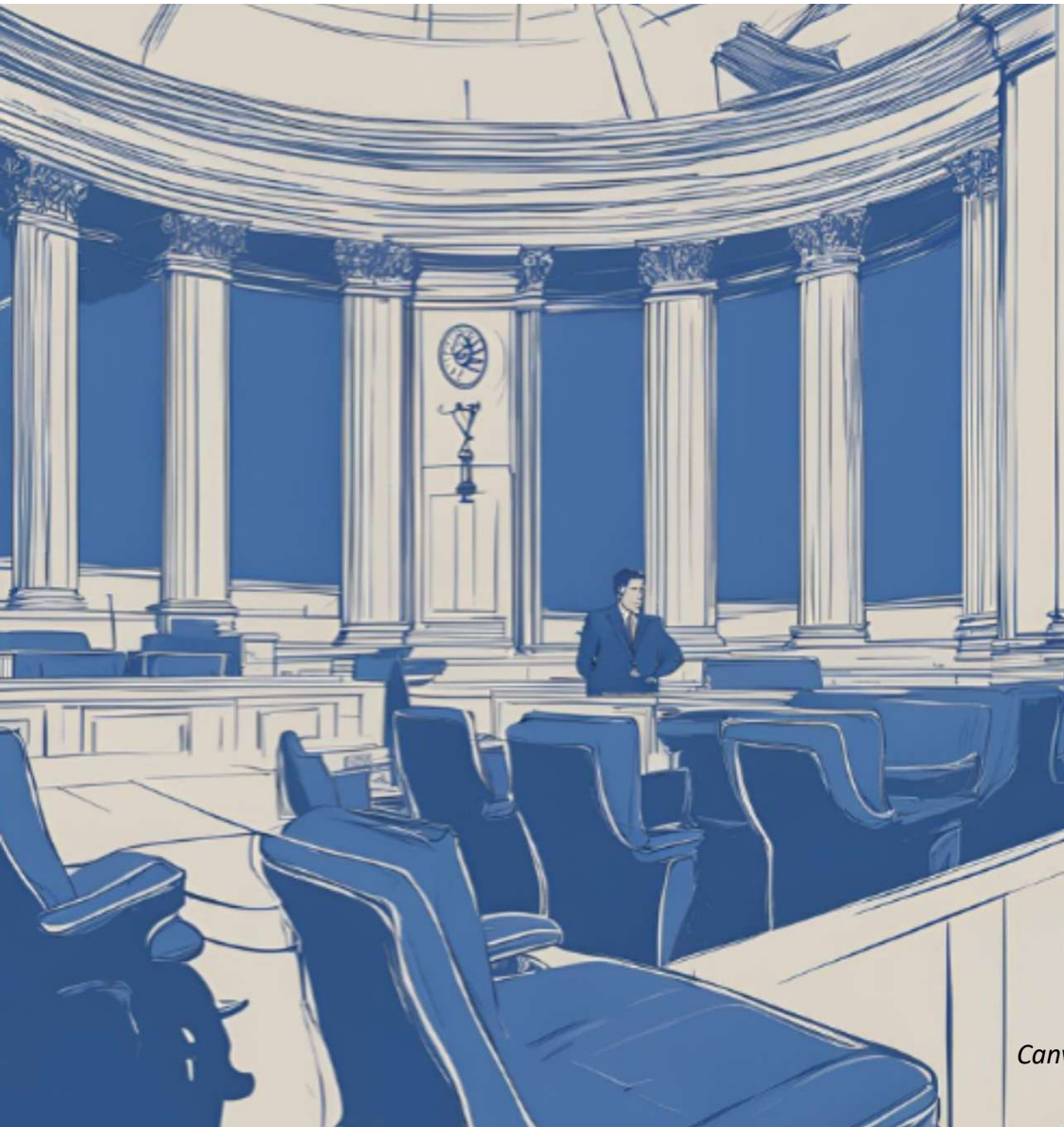
- Case C-321/17

reference for preliminary ruling was missing a summary statement of the subject-matter of the dispute and of the relevant facts (demanded under Article 94 of the rules of procedure of the court of justice)

- Case C-520/19

reference for preliminary ruling was missing explanations on the reasons for the choice of the provisions of EU law whose interpretation the member state court seeks as well as on the link that it establishes between these provisions and the national legislation applicable to the dispute submitted to it





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Thank You!

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