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FOR THE PROMOTION OF INTERNATIONAL
AND HUMAN RIGHTS LAW

Jean Monnet Project | EURIS

EU Responsibility in the International System

Training Manual No. 1

The doctrine of equivalent protection before the European Court of Human Rights

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The doctrine of equivalent protection before the European Court of Human Rights

Kalliopi Koufa Foundation for the Promotion of International and Human Rights Law
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The doctrine of equivalent protection before the European Court of Human Rights

Introduction – Conditions for application

The doctrine or presumption of 'equivalent protection' has been associated primarily with the interrelation between the human rights protection as envisaged by the European Convention of Human Rights (ECHR) and the fundamental rights protection system established by the European Union (EU). Nonetheless, this effort to determine whether the EU legal order effectively safeguards human rights is not something new; already in the 1980s, the German Constitutional Court dealt with the matter in its well-known *Solange* cases.[1]

The doctrine of 'equivalent protection' emerged in the case law of the European Commission of Human Rights (ECmHR) at first and then then transferred also to the European Court of Human Rights (ECtHR) as a compromise between the need to promote a more integrated system of international cooperation and the necessity to ensure the effective protection of human rights within these new modes of international cooperation. This *problématique* is even more pertinent in the case of the EU. Its highly integrated nature, further deepened after the Lisbon Treaty, which can directly and quasi-automatically impact its Member States (MS) has created some tension with the need for robust human rights protection.

In its milestone case of *Matthews v. the UK*, which will be analysed in the next section(s), the ECtHR made it clear that while the transfer of powers by States to International Organisations (IO) is not prohibited by the ECHR, the States remain obliged to protect human rights as they are envisaged by the ECHR. Additionally, the application of the doctrine is heavily influenced by the international debate considering interactions between IOs and their MS in the issue of international responsibility. Besides that, the case of the EU causes further issues taking into consideration that the Union has not yet become a Contracting Party to the ECHR, despite its clear obligation/commitment to do so (Article 2§2 TEU). That in combination with the fact that due to the EU law primacy,[2] which results in MS automatically applying legislation even in the case they have not actively participated in the decision-making process, created the fear of whether the ECHR States would be able to continue safeguarding the Convention's rights.

The doctrine had been present in the ECtHR for approximately a decade before the Court decided to summarise and clearly articulate the contours and main conditions for its application in the *Bosphorus* case. More precisely, the application of the presumption of 'equivalent protection' is premised on two conditions:

(a) The State must take the specific actions in application of *its strict international obligations*, meaning that it has *no discretionary power* to take any decision different from the one imposed by the (legal) system of the IO in which it is a member.
(b) In the case of the EU, it is important that the judicial mechanisms in place, entrusted with the observance of the compliance with human rights standards, have been fully deployed.

[1] *Internationale Handelsgesellchaft mbH v Einfuhr- & Vorratsstelle fur Getreide & Futtermittel*, BverfGE 37, 291, 29.5.1974 (*Solange I*); *Re Wünsche Handelsgesellschaft*, BVerfGE 73, 339, 22.10.1986 (*Solange II*).
[2] CJEU, C-6/64 *Flaminio Costa v. E.N.E.L.*, 15.7.1964, ECLI:EU:C:1964:66.

According to the ECtHR case-law, equivalence does not mean complete equation of the protection level ensured from the IO in question with the level secured by the ECHR, but it has to be considered as 'comparable'. Lastly, this presumption might be rebutted if, based on each cases specific instances, it can be proved that the system of fundamental rights protection suffers from manifest deficiencies.

ECtHR cases regarding the application of the doctrine of 'equivalent protection'

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
1	**ECmHR, Confédération française démocratique du travail (CFDT) v. European Communities Alternatively: Their Member States a) jointly and b) Severally** **[App no 8030/77]**	1978	CFDT filed a complaint for violation of Articles 11, 13 and 14 ECHR. The applicant organisation complained that their right to be appointed as representatives in the Consultative Committee of the European Commission on Steel and Coal and their right to be heard were disregarded; they also complained that due to the lack of appropriate appeal procedures before the national courts they had suffered from denial of justice.	**1.** The French state did not include CFDT to the list of proposed organisations which was sent to the Council of the European Communities. **2.** The French state and the rest of the EC Member States violated CFDT rights by exercising their voting rights within the Council.	-	-	-	**1.Concerning the EC *per se*** The application was declared *ratione personae* inadmissible because the EC were not a Contracting Party to the ECHR. **2. Concerning France** The application was inadmissible *ratione personae* because France had not recognised the right to individual petition before the Commission. **3. Concerning the remaining Member States** By participating in the Council decision, the Member States had not exercised their jurisdiction, thus the application was *ratione personae* inapplicable. (**p. 236)**
2	**ECmHR, Etienne Tête v. France**	1987	The case concerned complaints about	The impugned state act was the French legislation	The Commission recognised that the transfer of powers from	-	-	The Commission declared the application

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
	[App no 11123/84]		the method chosen in order to elect French representatives to the Assembly of the European Communities. The applicant complained that these restrictions violated her rights under Articles 3 Protocol 1 and 13 ECHR.	regulating the election of representatives to the Assembly (Law 77-729).	States to IO does not exclude them from the responsibility to ensure that ECHR rights are properly guaranteed. **(p. 67)**			inadmissible as manifestly ill-founded. **(p. 69)**
3	**Christiane Dufay v. European Communities,** ***alternatively*: Their Member States a) jointly or b) severally** **[App no 13539/88]**	1989	The applicant brought a complaint before the ECmHR concerning the fact that her application to the European Court of Justice (ECJ) was dismissed because she had failed to respect the 3-month deadline.	-	-	-	-	**1. Concerning the EC *per se*** The application was considered as inadmissible *ratione personae* since the EC had not been Party to the ECHR **2. Concerning the Member States** The Commission examined the admissibility under the exhaustion of local remedies rule. Since EC organs' acts can engage Member States responsibility, EC available judicial

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								remedies should be examined within the ambit of the exhaustion of local remedies rule. Thus, the application was inadmissible for lack of exhaustion of local remedies. **(§§16-20)**
4	**ECmHR, M. & Co. v. Germany** **[App no 13258/87]**	1990	The applicant complained about violations of Articles 1 and 6§§2 and 3(c) ECHR. The case concerned the enforcement of a fine imposed by the European Commission regarding an anti-trust case. The fine was also upheld by the ECJ and later enforced by German authorities. The German authorities tried to issue a writ of execution which was challenged by the applicant company before the German	The writ of execution issued by the Federal Government following the ECJ judgment.	The Government was not under an obligation to examine whether the ECJ judgment was issued in a procedure complying with fundamental rights; its only obligation was to examine the authenticity of the issued judgment. **(§38)**	The transfer of powers to an IO is not incompatible with the ECHR provided that fundamental rights receive equivalent protection within the organisation. **(§43)**	No manifest deficiency was found. The EC legal system was considered as both securing fundamental rights and including the necessary mechanisms for control of their observance. **(§44)**	The application was dismissed as *rationae materiae* inadmissible. **(§46)**

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			courts with no success.					
5	**ECmHR, Procola and Others v. Luxembourg** **[App no 14570/89]**	1993	The applicants complained that an additional milk levy imposed by Luxembourg in implementation of Regulations 856/84/EEC and 857/84/EEC violated their right to property (Article 1 Protocol 1 ECHR).	The Luxembourgish legislation implementing the EC Regulations was the impugned act in the present case. However, the Court did not review the national implementation act but the Community law.	The Court observed that the Regulation was directly applicable in every Member State, including Luxembourg, thus indirectly recognising minimum discretion to the State. **(p. 19)**	The Court did not examine the matter under the notion of equivalent protection however it directly reviewed whether the EC law concerning the imposition of milk production quotas pursued a legitimate aim. **(p. 19)**	-	The Court concluded that the application was inadmissible as manifestly ill-founded. (**§18, §20)**
6	**Cantoni v. France** **[App no 17862/91]**	1996	The applicant, a French supermarket manager who had been criminally convicted for unlawfully selling pharmaceutical products, contented that the definition of pharmaceutical products in French law, which was based on a verbatim	The French Public Health Code which transposed the EC Directive *verbatim.*	The ECtHR did not specifically address the issue of the State's margin of appreciation. However, it affirmed that States retain the right to determine how rigid or general their legislation might be. **(§§30-31)**	-	-	The Court declared that a word-by-word transposition of EC law did not remove the legislation from the ambit of Article 7 ECHR. However, no violation of Article 7 was found in substance. **(§§35-36)**

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			reproduction of Directive 65/65/EEC, was ambiguous and did not concern the products sold by him.					
7	**ECmHR, Richard Waite and Terry Kennedy v. Germany** **[App no 26083/94]**	1997	The applicants complained that by providing immunity to the European Space Agency (ESA) from judicial procedures relating to labour differences, the German authorities violated their rights under Article 6(1) ECHR.	-	-	The legal system established under Annex I of the ESA-Convention had provided the ESA with the opportunity to resort to various devices in order to settle its differences with private parties. Therefore, in private law disputes involving ESA judicial or equivalent review could be secured. **(§§76-78)**		The Commission found no violation of Article 6§1 ECHR. **(§§82-83)**
8	**ECmHR, Lenzing AG v. Germany** **[App no 39025/97]**	1998	The case concerned the revocation of a patent granted to the applicant company by the European Patent	The Court concluded that no state act could be identified concerning the applicant's complaint	-	The Commission reiterated that States are free to transfer competences to IO as long as	-	**As far as the EPO was concerned** the Commission declared the application as *ratione personae* inadmissible because

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
			Office (EPO) Appeal Board. The applicant asked the EPO to re-open proceedings, but the IO declared itself *functus officio.* The applicant also brought a complaint before the German Constitutional Court which was dismissed by the court as falling outside its jurisdiction. The applicant company complained before the ECmHR that by refusing to review the decision of the EPO Board of Appeal, Germany had violated their rights under Articles 6 and 13 ECHR.	concerning the procedural shortcomings before the EPO. However, it considered that the proceedings before the German Constitutional Court could potentially entail Germany's responsibility. **(p. 5)**		these IO can provide an equivalent level of human rights protection. **(p. 5)** **Concerning the European Patent Convention (EPC)** the Commission concluded that it provided an equivalent level of protection since it provided for appeal's procedures before competent bodies, these bodies enjoyed the necessary guarantees of independence, and a full evidentiary and adversary procedure could take place. **(pp. 5-6)**		the EPO was not a Contracting Party to the ECHR. **(p. 6)** **As far as Germany was concerned** the Commission declared the application inadmissible as manifestly ill-founded. **(p. 6)**
9	**Denise Matthews v. the United Kingdom**	1999	A UK national residing in	The 1976 Act concerning the	The 1976 Act was an international instrument to	The Court reiterated the		**1. Concerning the EC *per se***

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
	[App no 24833/94]		Gibraltar complained about breach of her rights under Article 3 of Protocol 1 ECHR due to the fact that the UK failed to organise elections for the European Parliament in Gibraltar.	elections for the European Parliament as a treaty adopted within the EC framework and signed by all Member States, including the UK.	which Member States, including the UK, entered freely. **(§33)** **Dissenting Judges Freeland and Jungwiert** stressed the fact that the UK could not at a later point amend the act and provide people in Gibraltar with the right to vote; thus, the State's freedom was minimised. **(§9)**	fact that transferring powers to IO is not incompatible with the ECHR as long as the IO in question secures the Convention rights. However, the Court insisted that the 1976 Act and the Maastricht Treaties could not be challenged before the ECJ since they did not constitute classic acts of the EC. **(§§32-33)**		Since it was not a Party to the ECHR, the EC could not be challenged before the Court. **2. Concerning the UK** Alongside the other State parties to the Maastricht Treaty, the UK was considered as *ratione materiae* responsible for the consequences of this international treaty, including the violation of Article 3 Protocol 1 ECHR. **(§65)**
10	**Segi and Gestoras Pro-Amnistia and Others v. 15 Member States of the European Union** **[App nos 6422/02 and 9916/02]** **ECHR Reports 2002-V pages**	2002	Segi and Gestoras Pro-Amnistia were both Basque-based organisations focusing on youth participation and protection of human right in	The Court considered that the decisions taken within the CFSP framework are intergovernmental in nature, thus the Member States by participating in the preparation	-	Decisions and acts taken within the CFSP framework cannot be challenged before the ECJ. A JHA issue may be referred to the ECJ only	-	The application was dismissed inadmissible because the applicants were not considered as satisfying the victim requirement of the Convention even though they were included in the list accompanying the

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			the region respectively. The organisations, alongside their respective spokespersons, complained to the ECtHR for their inclusion in the list of organisations pursuant to Common Positions 2001/930/CFSP and 2001/931/CFSP adopted by the Council of the EU aiming to fight terrorism.	and adoption of such Positions assume any possible responsibility. Furthermore, such decisions require the adoption of domestic measures in order to be implemented within the Member States, which in the present case was the decisions by the Spanish courts. **(p. 378)**		in virtue of a preliminary ruling and not immediately. **(p. 378)**		Common Positions. **(p. 383)**
11	**Senator Lines GmbH v. 15 EU Member States** **[App no 56672/00]** **ECHR Reports 2004-IV pages**	2004	The European Commission imposed a fine to the applicant for violation of Community fair competition legislation. The suspension of the fine, which was requested by the applicant, was dependent on the deposition of monetary guarantee. Due	-	-	The Court did not refer to the issue of equivalent protection within the EU legal system. However, the parties referred to it. **The respondent Government** claimed that the ECHR should	-	The Court ruled the application inadmissible due to the applicant's lack of victim status following the decision of the CFI to quash the imposed fine which was finalised prior to the ECtHR proceedings. **(p. 346)**

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			to the repeated refusals by the Court of First Instance (CFI) to allow dispensation of the bank guarantee requirement, the applicant complained that their rights of fair hearing, effective access to judicial recourse and the presumption of innocence (Article 6 ECHR) were violated.			not review the case since the EC legal order ensured equivalent human rights protection. **(p. 338)** **The applicant** distinguished this case from the previous *CFDT case* where the *interna corporis* of the EC were at questions; thus, they called for the application of the *Matthews* jurisprudence and the overturn of the 'equivalent protection' presumption. **(p. 340)** **The third parties**, especially, the European Company Lawyers Association and		

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						the International Commission of Jurists (ICJ), called for the non-application of the 'equivalent protection' doctrine because fundamental rights were not guaranteed.		
12	**Emesa Sugar N.V. v. The Netherlands** **[App no 62023/00]**	2005	Due to the amendment of an EC Implementing Convention concerning the association with 'overseas countries and territories' by the European Council, the applicant company's importing capabilities were severely impacted. Subsequently, the company initiated proceedings before the Dutch Courts which	The existence or not of a state act was not defined by the Court. However, the Dutch government claimed that the act in question was one of the ECJ.	-	The Court did not deal with the issue of equivalent protection. However, all parties to the case, namely the Dutch government **(§§14-16)**, the applicant-company **(§§19-20)** and the European Commission intervening as third party referred to the presumption secured for the EC in the *M. & Co v. Germany case*.	-	The Court declared the application inadmissible *ratione materiae* because the case in question did not fall under neither the civil not the criminal ambit of Article 6 ECHR. **(§30)**

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			decided to submit a preliminary request to the ECJ. The applicants complained that their right to a fair hearing (Article 6 ECHR) had been negated by the fact that they had not been allowed to respond to the Opinion of the ECJ Attorney General (AG).					
13	**Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland** **[App no 45036/98]**	2005	The applicant-company saw one of its aircrafts seized in Irish territory pursuant to a decision by the Irish authorities based on Regulation EEC/990/93, which had implemented UNSC Res. 820(1993) on sanctions against the FRY. The applicant	The applicant challenged the detention of their leased aircraft which was based on a decision made by the Irish Minister for Transport. Therefore, the Court found that the applicant was not challenging the legality of the Regulation as such, rather its implementation on a national	**1. As far as the Irish state is concerned:** Once adopted the Regulation was 'generally applicable', 'binding in its entirety' and no Member State (incl. Ireland) could lawfully depart from its provisions. **2. As far as the Irish Supreme Court is concerned** there was no real discretion either before or after the preliminary reference to the ECJ because: (a) it was the court of last	The Court reiterated and summarised its previous jurisprudence on 'equivalent protection'. Namely: 1. Transferring competences to IO is not incompatible with the ECHR. 2. International Organisations, such as the EU, which are not	The presumption of equivalent protection can be rebutted if based on the circumstances of a particular case it can be considered that the protection afforded by the international organisation is manifestly deficient. **(§156)**	The Court concluded that at the time the Community law offered an equivalent level of protection concerning fundamental rights on a substantive level while the ECJ safeguards the procedural observance of that respect. Additionally, no manifest deficiency could be found, therefore the presumption was not

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			challenged the decision before Irish Courts and the Supreme Court of Ireland made a preliminary referral to the ECJ. The ECJ declared that the seizure was a lawful and legitimate restriction to the company's rights of property and commercial freedom. The Supreme Court declared that it was bound by the ECJ decision on the matter and thus allowed the seizure to take place.	level.	instance in Ireland, the question was of central importance to the domestic decision and there had been no clear interpretation by the ECJ in past, (b) the ECJ decision was binding for the Supreme Court, (c) the ECJ ruling effectively determined the domestic proceedings. **(§§144-145, §§147-148)** ***See contra*** **Joint Concurring Opinion of Judges Rozakis *et al.*** where it was argued that domestic courts retain full discretion in applying the ECJ ruling based on each case's circumstances. (**§3)**	parties to the ECHR cannot be held directly responsible for potential violations. 3. States remain responsible for ECHR violations in light of their international commitments taken after becoming parties to the ECHR. 4. State actions in the framework of IO are deemed ECHR compatible if the IO in question offers equivalent protection concerning the substantive and procedural guarantees of human rights. 5. Equivalent protection does		rebutted for Ireland. ***See though the criticism:*** **1. The jointly concurring judges' opinion** They argued that the internally looking preliminary reference scheme is not a procedural equivalent to the externally based remedies provided by the ECHR. Additionally, the existence of discretion in the application of the ECJ ruling by the national courts does not create equivalent protection. The equivalence of protection should be examined on a case-by-case basis while lastly the argued that the manifestly deficient criterion sets a lower threshold of protection allowing the EC to apply

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						not mean identical but rather comparable to the ECHR level and standards. **(§§154-155, §§159-165)**		different (double) standards concerning the protection of human rights. **(§§166-167)** **2. Judge Ress' concurring opinion** The judgment should not be considered as establishing double standards in human rights protection and equivalence of protection should be examined on a case-by-case basis at all times. **(§2)**
14	**Coopérative des agriculteurs de la Mayenne and 1 coopérative laitière Maine-Anjou v. France** **[App no 16931/04]** **ECHR Reports 2006-XV pages**	2006	The French authorities imposed several fines to the first applicant, a milk company, for exceeding the established by law milk quotas; the second applicant intervened in favour of the first in the procedures before French courts. The applicant(s)	The French act(s) imposing the levy over the company and deciding on the seizure of the exceeding milk amount.	According to the ECtHR the French authorities' decision was based on the detailed provisions of Regulation 857/84/ EEC and therefore no discretion was afforded to them when determining the levy's amount. **(p. 210)**	The Court briefly referred to the presumption of equivalent protection established in favour of the EC by concluding that it was not rebutted based on the circumstances of the case. **(p. 211)**	The Court mentioned that no manifest deficiency could be found in the present case. **(p. 211)**	Even though the levy interfered with the applicants' right to property, the Court considered that the interference was justified because it was pursuing a legitimate aim, including the promotion of international cooperation via states' compliance to EC legislation. The application was eventually dismissed

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			complained about multiple violations of the ECHR, namely: the lack of effective judicial procedure to challenge the levy imposed, the ambiguity and lack of security of the law concerning milk quotas and the deprivation of their property because of the seizure of the existing milk amount.					as manifestly ill-founded. **(p. 211)**
15	**Agim Behrami and Bekir Behrami v. France & Ruzhdi Saramati v. France, Norway and Germany** **[App nos 71412/01 and 78166/01]**	2007	The complaints concerned actions of the UN Mission in Kosovo (UMIK) and the NATO-led Kosovo Force (KFOR) which were established based on UN Security Council resolutions. The first two applicants complained	The Court determined that none of the impugned acts could be attributed to the respondent States but only to the UN while at the same time they did not take place on the territory of the States or by virtue of decisions of their authorities.	The Court concluded that in the case of UNSC Resolutions under Chapter VII of the UN Charter, even voluntary acts not flowing from Charter-based obligations, such as the vote of permanent UNSC members or the contribution of troops to security missions, are exempted from the Courts scrutiny, taking into consideration the role of the UNSC to secure international peace and security. **(§149)**	**1. The applicants** tried to convince the Court that based on its previous case law, the substantive and procedural protection of fundamental rights within the KFOR system could not be considered equivalent to the protection afforded by the	The Court did not explicitly address the issue of manifest deficiency since the acts could not be attributed to the respondent States.	The Court concluded that the case at hand was different than the *Bosphorus* one and declared the complaints inadmissible *ratione personae*. **(§152)**

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
			about violation of Article 2 ECHR (right to life) due to KFOR-participating French troops' failure to mark and/or defuse identified cluster munition (CBU) bombs. The applicant in the second case complained about his extra-judicial detention by KFOR to UNMIK facilities (Articles 5 and 13 ECHR) and for the lack of effective procedures in order to challenge said detention (Article 6§1 ECHR).			ECHR. **2. The Court** did not seem to apply the test of equivalent protection to acts under UN mandate, thus providing UN with a type of immunity. **(§§150-151)**		
16	**Dušan Berić and Others v. Bosnia and Herzegovina** **[App nos 36357/04, 36360/04, 38346/04 *et***	2007	Following a decision by the High Representative of Bosnia, whose powers derived	The Court considered that the acts of the High Representative were international	-	-	-	The Court declared the application as inadmissible *ratione personae*. **(§30)**

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	***al.*]**		from UNSC Resolutions and the Bonne Agreement, the applicants were removed from their public and political positions and were indefinitely barred from holding such positions or running in elections. Subject to his consent, the decision could be reviewed by the Constitutional Court; the applicants had not had this opportunity. The applicants complained to the Court for violations of Articles 6, 11 (freedom of association) and 13 ECHR.	in nature since they were based on UNSC delegation and no additional procedural step was required by domestic authorities. Therefore, no state act was identified. **(§29)**				
17	**Philip Boivin v. France, Belgium and 32 other Member States of the Council of Europe**	2008	The applicant's appointment as chief accountant at the Institute of	The Court concluded that no act could be attributed to the	-	Even though the Court mentioned that the potential	-	Since there had been no state act, the application was declared

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	[App no 73250/01] **ECHR Reports 2009-IV pages**		Air Navigation Services, which is part of Eurocontrol was cancelled. He challenged the cancellation before the International Labour Organisation's Administrative Tribunal (ILOAT) which sided with Eurocontrol but awarded compensation to him. The applicant complained that his rights under Articles 6,13 and 14 ECHR had been violated because Eurocontrol enjoyed a remedy before the International Court of Justice and because ILOAT did not subject his complaint to proper	respondent States. It determined that the impugned acts in reality considered the ILOAT, while they remained outside State jurisdiction, no national authorities were involved and no state act influenced the ILOAT actions. **(p. 244)**		responsibility of France and Belgium would have to be examined under the equivalent protection doctrine, it did not delve further into it since such claim was not raised by the applicant. **(p. 244)**		inadmissible *ratione personae.* **(p. 245)**

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			examination, lacked sufficient explanation and did not award him the full compensation.					
18	**Association Biret and Co. & Association Biret International v. 15 EU Member States** **[App no 13762/04]**	2008	A series of Directives concerning hormonal additives to meat were introduced by the EC severely impacting the importing activities of the applicant companies from the US to the EU. The directives were later challenged before the World Trade Organisation (WTO) competent bodies, which concluded that the EC had violated the Agreement on Sanitary and Phytosanitary Measures (SPS). Following the	**1.** As far as alleged deficiencies of the EC judicial system were concerned, the Court found that no state intervention took place. **2.** Concerning the right to property, the Court examined the French law transposing the EC Directives in domestic legislation.	Even though the complaint regarding the violation of the right to property (Article 1 of Protocol 1 ECHR) was based on the French law implementing an EC Directive, the Court did not consider whether France had a margin of discretion in the implementation of Community legislation.	The Court very briefly referred to the issue of equivalent protection of fundamental rights as afforded by the EC legislation. **(§25)**	The Court found no manifest deficiency in the legal system of the EC. **(§27)**	**1.** The application was declared manifestly ill-founded as far as France was concerned. **2.** Concerning the EC, the application was declared inadmissible *ratione personae* since the EC was not a Party to the ECHR. **(§§28-29)**

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			WTO decisions, the applicants complained before the ECJ requesting compensation for non-contractual liability of the EC, but the ECJ dismissed their claims because the SPS Agreement did not give appeal rights to the applicants and in any case it entered into force after the adoption of the Directives. Before the ECtHR, the applicants complained that there was no effective remedy in order to challenge the two Directives.					
19	**K.R.S. v. the United Kingdom** **[App no 32733/08]**	2008	The applicant, an Iranian national, sought asylum in the UK after arriving there via Greece. The UK	The impugned act in the present case was the decision of expulsion back to Greece as well as	The Court concluded that the return of asylum seekers in the countries of first entrance in accordance with the Dublin Regulation	The Court very briefly recognised that the Dublin system offered both substantive	The Court does not seem to refer directly to the issue of manifest	The application was declared manifestly ill-founded and consequently inadmissible. **(§52)**

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
			authorities declined his application and decided to return him to Greece which had been the country of his first entrance (Dublin II Regulation). The applicant challenged this decision but was later refused permission to apply for judicial review. Before the ECtHR, the applicant complained that his return to Greece violated his rights under Article 3 ECHR and the refusal to allow a judicial review violated Article 13 of the Convention.	the refusal to permit the judicial review by the UK competent authorities.	provisions constitutes implementation of the legal obligations of an EU Member State. Thus, the Court implied that the State enjoyed no discretion and the *Bosphorus* presumption was applicable. **(§45)**	guarantees for the protection of fundamental rights as well as the necessary procedural mechanisms controlling their observance. **(§45)**	deficiencies. However, the Court considered whether the protection in Greece could be considered as adhering to the EU law standards. More precisely, Greece could not be considered as offering a lower level of asylum seekers' protection, because it was not returning asylum seekers to Iran, it was presumed to follow the Dublin standards of living conditions and it provided the right to appeal decisions to appeal. **(§46)**	

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20	**Bernard Connolly v. 15 EU Member States** **[App no 73274/01]**	2008	The applicant, a European Commission employee, published a book including compromising elements for the Commission. He was subsequently dismissed after a disciplinary procedure, and he challenged his dismissal before the CFI and then the ECJ. During the EU Courts proceedings, the applicant asked for and was denied the possibility to respond to the AG Opinion. Before the ECHR, the applicant complained about violations of Articles 6 and 13, Article 10 on freedom of expression and Article 1 Protocol 1	The Court identified no state act. Both alleged violations were based on acts of the European Commission and judgments of the CFI and ECJ, so the Court had no jurisdiction.	-	Even though the Court did not identify any state act in question, it referred to the fact that in its previous case law it had established the presumption of human rights' 'equivalent protection' for the legal order of the EU. **(§§24-25)**	The Court very briefly concluded that there was no reason to the overturn of the presumption (indirectly referring to the non-existence of manifest deficiency). **(§25)**	The application was declared inadmissible *ratione personae* for both the EU, since it was not a Party to the ECHR and the Member States since the Court found no act attributable to them. **(§§28-30)**

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
			ECHR concerning violations of the right to property.					
21	**Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A v. The Netherlands** **[App no 13645/05]** **ECHR Reports 2009-I pages**	2009	The applicant association focused primarily on fishing activities in the Wadden Sea, the Netherlands. However, Dutch non-governmental organisations focusing on the environmental conservation of the area appealed against the association's fishing licences. The Dutch Council of State decided to seek a preliminary ruling from the ECJ concerning the interpretation of domestic law in light of the Habitats Directive. The applicant association was refused the	The request by the domestic Court for a preliminary ruling by the ECJ was considered by the Court to be the national act in question. The Court then proceeded to examine the internal guarantees of the EU, namely the procedures before the ECJ.	The Court seems to recognise a certain level of discretion to the Member States' courts in requiring the preliminary ruling. However, no discretion can be considered once the ECJ has given its ruling. **(p. 201)**	The presumption of equivalent protection is expanded by the Court from examining acts of States based on their international obligations to reviewing the procedures of IO themselves and more specifically the guarantees of the procedures before the ECJ in the present case. **(p. 201)**	The Court concluded that the system of the EU was not manifestly deficient at the time of the decision. It based its assessment on the fact that a) there was a possibility to re-open proceedings after the AG Opinion, b) the request by the parties to the present case was reviewed in the merits of the decision and c) there is the possibility for a second preliminary request by the Court. However, the Court did not	Since no manifest deficiency was found, the Court declared the application inadmissible as manifestly ill-founded. **(p. 202)**

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			possibility to reply to the AG Opinion and consequently filled the complaint before the ECHR for violations of Article 6§1 ECHR (right to adversarial proceedings).				clarify whether it considered those facts as determining equivalence or lack of deficiency. **(p. 202)**	
22	**Emilio Gasparini v. Italy & Belgium** **[App no 10750/03]**	2009	The applicant, a NATO employee, challenged before the NATO Appeals Board the indirect salary cuts he suffered. Before the Court, he complained that NATO Appeals Board's procedures violated Article 6 ECHR because they were not publicly held, and the members of the Appeals Board had not been impartial. He complained that Belgium, as	Even though no national act was identified by the Court, it proceeded and examined the internal elements of the NATO Appeal Board internal mechanism.	-	The ECtHR confirmed the expansion of the 'equivalent protection' test to procedures established within IO. In the present case, it concluded that NATO internal dispute resolution scheme provided equivalent protection without however explaining its rationale behind this presumption.	The Court did not find any manifest deficiency concerning NATO's internal dispute resolution system. However, it highlighted that the level of scrutiny applied in that case was lesser than the scrutiny applied for domestic court proceedings. **(§§18-19, §21)**	The Court concluded that since no manifest deficiencies can be identified within the NATO Appeals Board procedure, the presumption of equivalent protection could not be rebutted. Thus, the application was dismissed as manifestly ill-founded. **(§§27-28)**

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
			NATO host country, and Italy, as his nationality country, failed to ensure the existence of a mechanism that would ensure equivalent protection to the ECHR.			**(§20)**		
23	**Rambus Inc. v. Germany** **[App no 40382/04]**	2009	The applicant company was the holder of a European patent eventually revoked by the EPO Board of Appeal. The company challenged this decision before the German Constitutional Court, which refused to admit it for consideration. The applicant complained before the Court that the EPO appeal procedure suffered from manifest	The Court found no state intervention in the present case and concluded that the complained concerned the procedural shortcomings of the EPO, an IO. **(p. 6)**	The Court considered that granting or revoking a patent had direct effect with the legal order of Germany, which is a Contracting Party to the EPO. It thus recognised *as an obiter dictum* that no discretion can be found. **(p. 8)**	Even though the Court found no State act in the case, it examined whether the presumption of equivalent protection, as secured for the EPO system, could be applied. **(pp. 6-7)**	The Court found no evidence of manifest deficiencies in the appeals procedure of the EPO that could rebut the *Bosphorus* presumption. **(p. 8)**	The Court declared the application inadmissible as manifestly ill-founded. **(p. 8)**

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
			deficiencies and claimed that Germany violated their rights under Article 6 ECHR by transferring competences to the IO.					
24	**Luis Maria Lopez Cifuentes v. Spain** **[App no 18754/06]**	2009	The case concerned the institution of disciplinary proceedings and eventual suspension of an employee of the International Olive Council (IOC) an IO based in Spain. The IOC Executive Director rejected the applicant's appeal, and his decision could be challenged before the ILOAT. Eventually, the applicant complained to the Court that by hosting IOC in its territory,	The Court considered that the fact that an IO had its Headquarters in a specific Contracting Party was not sufficient ground in order to attribute this IO's acts to the state. **(§25)** The Court concluded that in reality the applicant was contesting the acts and decisions of an IO, which has its own legal personality and falls outside of state jurisdiction. **(§§27-29)**	-	-	No claim of manifest deficiencies was raised by the applicant.	**1. As far as the IOC is concerned** the Court concluded that since the IO had not acceded to the ECHR the application had to be declared *ratione personae* inadmissible. **(§§29-30)** **2. As far as the immunity of the IOC before the Spanish courts was concerned** the Court declared the application inadmissible as manifestly ill-founded. **(§31)**

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
			Spain had violated her rights under Article 6 ECHR because it allowed IOC to exercise judicial powers over its inhabitants.					
25	**Robert Stapleton v. Ireland** **[App no 56588/07]**	2010	A European Arrest Warrant (EAW) concerning more than 30 fraud cases between 1978-1982 had been issued against the applicant by a UK court in 2005. He challenged the EAW enforcement before the Irish courts claiming that his rights under the Convention could be endangered due to the time delay until the issuance of the EAW. However, the Irish Supreme Court did not	The decision of the Irish Supreme Court allowing the enforcement of the EAW and surrender of the applicant to the UK authorities was considered the national act.	Taking into consideration that the cornerstone of the EAW system is mutual recognition of judicial decisions and mutual trust towards the legal systems of the other EU Member States, the Irish Supreme Court declared that it had to operate based on the assumption that the issuing UK courts would respect ECHR rights. However, the ECtHR did not specifically address the issue of state discretion concerning the enforcement of the EAW. **(§26)**	The Court indirectly adhered to the *Bosphorus* presumption of equivalent protection by deciding to apply a lower standard of review, namely the existence of 'real risk of unfairness in criminal proceedings'. **(§§27-28)**	The criterion of 'manifest deficiencies' could be found in the applicable by the Court standard of 'flagrant denial of justice' that could trigger Ireland's responsibility. **(§26)**	The Court concluded that since there was no indication that the applicant would be subjected to a flagrant denial of his Article 6 ECHR rights in the UK, the application was dismissed as manifestly ill-founded. No reference was made to either equivalent protection or manifest deficiencies. It needs to be noted that the Court expressed the view that a lower threshold of scrutiny might be applied in the event that derogable rights are allegedly in danger in case of an

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			agree and allowed the enforcement of the EAW.					individual's surrender/extradition. **(§§32-33)**
26	**M.S.S. v. Belgium & Greece** **[App no 30696/09]**	2011	The applicant, an asylum seeker from Kabul, was arrested in Belgium without identification documents. On the basis of Dublin II Regulation, he was sent back to Greece, which was the country of his first entry, despite his expressed fear because of the poor asylum detention conditions in Greece. The applicant complained to the Court for violation of Article 3 ECHR by Greece due to the asylum seekers living conditions and by Belgium because of its decision to send	The decisions of the Belgian Aliens Appeals Board that rejected the applicant's request not to be sent back to Greece due to the appalling living conditions of asylum-seekers.	The Court decided that Belgium had a margin of appreciation under the 'sovereignty clause' of the Dublin II Regulation which allows a Member State to become responsible for examining the asylum-seeker's application even though it is not the country of first entry. The criteria for applying the 'sovereignty clause' were laid down in Article 3§2 of the Dublin II Regulation. **(§§339-340)**	By recognising that Belgium was afforded a specific margin of discretion by the Dublin II Regulation, the Court concluded that the doctrine of equivalent protection was not applied in the present case. Additionally, the Court stressed that the doctrine of equivalent protection was limited only to the former first pillar of Community law. **(§338)**		The presumption of equivalent protection did not apply in the present case, since the Belgian national acts were not a result of its strict international obligations, thus the State had the necessary discretion. Both Belgium and Greece were found to have violated Article 3 ECHR. **(§360)**

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
			him back.					
27	**Al-Jedda v. the United Kingdom** **[App no 27021/08]**	2011	The applicant was interned by the British forces present in Iraq following the 2003 invention, an operation later upheld by a UNSC Chapter VII resolution.	The Court tried to determine whether the UK acts in Iraq could be attributed to the State or the UN. It concluded that contrary to the case of *Behrami and Saramati*, the impugned acts here were completely attributable to the UK since the UN exercised no overall nor effective control despite the UNSC authorisation.	The Court took into consideration the fact that the UNSC Resolutions had not included internment as a possible measure to be taken by the forces on the ground. Therefore, the Court indirectly concluded that the UK was not acting in compliance with strict international obligations. **(§105, §109)**	The Court did not refer to the 'equivalent protection' doctrine nor the *Bosphorus* case since it had already recognised that the UK enjoyed a certain degree of discretion.	-	The Court concluded that the UK had violated Article 5§1 ECHR. **(§110)**
28	**Ullens de Schooten & Rezabek v. Belgium** **[App nos 3989/07 & 38353/07]**	2011	The two applicants, directors of a clinical biology laboratory, were charged with multiple offences relating to the management of the laboratory. During their application before the Belgian Council of State, they	The impugned state act was the refusal of the Belgian Council of State, as a court of last instance, to request a preliminary ruling by the ECJ on the matter.	Referring to the ECJ's *CILFIT* judgment, the Court considered that last instance courts maintain a level of discretion when deciding whether to request a preliminary ruling. More precisely, they may not request a preliminary ruling if (a) the question is irrelevant, (b) if the ECJ has already interpreted the issue under question or (c) the application of EU law is	There is no mention to the equivalent protection doctrine in the case either because the impugned act was purely national in essence or because of the wide margin of discretion that the State	-	Without any substantial reference to the equivalent protection doctrine or the *Bosphorus* case-law, the Court concluded that there has been no violation of Article 6§1 ECHR. However, it required national courts to give reasons for their refusal to refer a

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			request the Court to submit a preliminary ruling to the ECJ on the matter. The Belgian Council of State refused to submit this request. The applicants complained to the ECtHR that this refusal violated their rights under Article 6 ECHR rights.		so obvious leaving almost no room for reasonable doubt. **(§56)**	enjoyed.		matter to the ECJ in order for the refusal to be compatible with the ECHR. **(§67)**
29	**Irini Lechouritou & Others v. Germany and 26 other EU Member States** **[App no 37937/07]**	2012	The case concerned beneficiaries of victims of the Kalavryta massacre that took place during WWII by German armed forces. They brought the case before the Greek courts and the Patras Court of Appeal referred the matter to the ECJ for a preliminary	The impugned act in the case was the refusal of the ECJ to apply the 1968 Brussels Convention.	-	Even though no national act was questioned, the Court proceeded to examining the internal procedures before the ECJ. **(§11-13)**	The Court considered that the interpretation of the Brussels Convention by the ECJ did not present any manifest deficiencies. **(§14)**	The Court declared the application inadmissible *ratione personae* as far as the EU was concerned since it is not a Contracting Party to the ECHR. As far as the EU Member States were concerned, the Court declared the application inadmissible as manifestly ill-founded. **(§§15-17)**

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
			ruling on the application of the 1968 Brussels Convention in the case. The ECJ considered that the acts of the German armed forces did not fall within the ambit of the Brussels Convention. The applicants complained that the refusal by the ECJ to apply the provisions of the 1968 Brussels Convention violated their rights under Articles 6 and 13 ECHR and Article 1 Protocol 1 ECHR.					
30	**Nada v. Switzerland** **[App no 10593/08]**	2012	The applicant was banned from entering or transiting through Switzerland due to his inclusion in the list of individuals	The impugned act in question was national, i.e. the Swiss legislation implementing the UNSC resolution.	The Court recognised that UNSC Resolutions of this nature impose certain obligations of result on the States to which they are addressed, meaning that States retain some discretion in the way they choose to incorporate and	The Court did not address the issue of whether the UNSC system of individual sanctions provided with 'equivalent	-	The Court declared that new obligations undertaken by the ECHR Contracting Parties on a later stage should not derogate from their previous Convention-based

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
			annexed to the (Swiss) Federal Taliban Ordinance, a state legislation issued following UNSC Resolutions against Taliban, Osama bin Laden and al-Qaeda. The applicant complained that the sanction imposed to him violated Articles 5 (right to liberty), 8 (right to private life), 9 (freedom of religion) and 13 (access to effective remedy).		implement these Resolutions in their domestic legal orders. **(§§176-180)**	protection' of human rights, possibly because it had already recognised that Switzerland had some discretion on the matter.		obligations (implicit reference to the notion of equivalent protection). It concluded that there had been a violation of Articles 8 and 13 ECHR by Switzerland. **(§§198-199)**
31	**Djokaba Lambi Longa v. The Netherlands** **[App no 33917/12]**	2012	The applicant, a member of a political movement in the Democratic Republic of the Congo (DRC), was transferred to the International Criminal Court	The Court found no Dutch national act but considered that the only ground for the applicant's detention had been the Agreement between the ICC and DRC; thus,	The refusal of the Dutch authorities to transfer the applicant in their custody was purely discretional since it derived from no international obligation, more or less strict. **(§64)**	The Court examined whether the ICC procedures and guarantees offered a level of equivalent protection for fundamental rights. **(§§77-80)**	-	The Court declared the application inadmissible *ratione personae* after concluding that the level of protection afforded by the ICC was equivalent. **(§84)**

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			to testify as a defence witness. While in the Netherlands, the applicant applied for asylum, but his application was rejected. Thus, he remained in the custody of the ICC in the UN Detention Unit.	the applicant did not fall within Dutch jurisdiction. However, the applicant maintained that the Netherlands had repeatedly refused to arrange his transfer from ICC to Dutch custody by sending *notes verbales* to the ICC.				
32	**Michaud v. France** **[App no 12323/11]**	2013	In order to fight money laundering and terrorism financing, the EC adopted three consecutive Directives obliging independent lawyers to inform the authorities in case of suspicious activities. France transposed the Directive(s) almost *verbatim* in its	The impugned act in question consisted of two elements; first, the French legislation implementing the EC directive in domestic legislation and secondly the refusal of the Council of State to request a preliminary ruling by the ECJ.	**a. Concerning the law transposing the EU Directive in the French legal system** the Court agreed with the applicant and the intervening organisations that the State enjoyed a wide margin of appreciation since -contrary to Regulations- Directives are binding only as far their result is concerned allowing the States to choose the means and manner of achieving it. **b. Concerning the refusal of the French Council of State to**	The ECtHR referred extensively to the guarantees provided by the EU legal order concerning the equivalent protection of fundamental rights in both a substantive and procedural level. It paid particular attention to the procedural guarantees provided by the ECJ, focusing	The Court made a general remark about the possibility of overturning the presumption of equivalent protection in case of manifest deficiencies based on the circumstances of a particular case. Nevertheless, since the presumption	Even though the Court declared the application admissible as far as Article 8 ECHR was concerned, it found no substantive violation of the rights to private life. **(§§131-132)**

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			domestic legislation. The applicant challenged this legislation before the French Council of State and asked it to submit a request for a preliminary ruling to the ECJ; however, the Council of State refused to do so. The applicant complained before the ECtHR that his rights under Articles 6,7 and 8 ECHR had been violated.		**request a preliminary ruling,** the Court considered -agreeing again with the applicant- that the Council of State decided not to refer the issue to the ECJ even though the legal issue under question remained unresolved. **The government-respondent** claimed that it had been fulfilling its obligations under EU law, which provided limited leeway concerning only practical arrangements. **(§§112-113)**	on the indirect benefits for individuals safeguarded by the actions initiated by EU institutions and/or Member States as well as the possibility of individuals to bring actions for non-contractual liability of the EU institutions before the ECJ. However, since the State enjoyed discretion in both the transposition of EU legislation and the referral for a preliminary ruling to the ECJ, the ECtHR concluded that the presumption of equivalent protection was not applicable in the case at hand. **(§§102-111)**	was not applicable due to the existence of discretion, the Court did not elaborate further on the matter.	

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33	**Sofia Povse & Doris Povse v. Austria** **[App no 3890/11]**	2013	The case concerned the enforcement under Regulation 2201/2003 (Brussels IIa) of an Italian court order for the return of a child (the first applicant) who has been taken to Austria by its mother (the second applicant). The second applicant challenged the Italian court order before Austrian courts. The Austrian Supreme Court concluded that according to ECJ relevant case law in case a certificate of enforceability had been issued under Article 42(1) of the Brussels IIa Regulation, the requested court was required to proceed to	The decision of the Austrian Supreme Court upholding the Italian courts' return order was the impugned act in the present case.	The Court considered that the Austrian courts enjoyed no margin of discretion concerning the enforcement of the order under the Brussels IIa Regulation, since any possible review of the order had to be done by the issuing courts, i.e. the Italian courts, after a possible request for a stay of enforcement. **(§79, §82)**	In the present case, the Court considered that the presumption of 'equivalent protection' was still applicable especially since the Austrian courts submitted a request for a preliminary ruling to, which, even though not directly addressing the issue of fundamental rights, it clarified that any concern about violations of fundamental rights had to be raised before the Italian courts. The Austrian courts simply followed the decision of the ECJ on the matter. **(§85)**	The Court found no manifest deficiency to the Brussels IIa Regulation system, especially since the applicants could in any case raise fundamental rights' concerns before the Italian courts, which were the competent ones; therefore, legal aid remained in principle available to them. **(§§86-87)**	The Court declared the application inadmissible as manifestly ill-founded. **(§89)**

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			enforcement and that any questions relating to the merits of the return decision, in particular the question whether the requirements for ordering a return were met, had to be raised before the courts of the requesting State, i.e. Italian courts.					
34	**Al-Dulimi & Montana Management Inc. v. Switzerland** **[App no 5809/08]**	2013	The applicants had been included in the UNSC list of persons and entities related to the former Iraqi government which was drafted following the Iraqi invasion in Kuwait. Based on the UNSC list, the Swiss Department of Economics composed a list of assets to be frozen or confiscated, including assets	The measures in question, i.e. the Ordinance of the Federal Council and the decision to confiscate the applicants' assets, were national acts of UNSC Resolutions' implementation by the Swiss State, thus directly attributable to it.	The Court considered that the UNSC Resolutions establishing the sanctions regime left no margin of discretion to the States concerning their national implementation. **(§117)**	The Court claimed that the presumption of 'equivalent protection' could apply to international organisation besides the EU, including the UN system. However, it did not become clear whether the Court considered the presumption applicable to the UN in the first place or not.	Even though the applicants referred extensively to the existence of manifest deficiencies within the UN sanctions scheme, the Court made no reference to that element. However, it concluded that the presumption of equivalent protection had been rebutted.	The Court concluded that as long as no effective and independent judicial review system had been established within the UN system concerning addition or deletion from the sanctions list, individuals should have been able to seek affective protection before national courts. Therefore, Switzerland was found in violation of Article 6§1 ECHR. **Dissenting Opinion**

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
			belonging to the applicants. Their first application to be removed from the abovementioned UNSC list was without effect while their second application in 2009 was rejected. The applicants complained before the ECtHR that their resources had been confiscated in the absence of a procedure compatible with Article 6§1 ECHR.			More precisely, the Court concluded that the 'Focal Point' established in combination with the lack of a mechanism comparable to the Ombudsman in the context of the sanctions' regime for former Iraqi officials, did not provide an equivalent level of human rights protection. **(§116)**		**of Judge Lorenzen joined by Judges Raimondi and Jočienė** The Judges argued that the Court failed to take into account the obligations imposed on Switzerland by Article 103 of the UN Charter about giving priority to the UN obligations against any other international obligation they might have. Thus, the judges concluded that Switzerland did not have any other option than to apply the said UNSC Resolutions and consequently not to judge the merits of the complaints on the national level. **(§§121-122, §§139-140)**
35	**Avotiņš v. Latvia** **[App no 17502/07]**	2014	The applicant had recognised the existence of a debt in favour of a commercial company	The impugned act was the decision by the Latvian Supreme Court to enforce the Cypriot court	The Court declare that the Latvian Supreme Court was under the duty to ensure recognition and prompt enforcement of the Cypriot decision, thus	Despite a very brief mention to the *Bosphorus* presumption of equivalent protection and	-	The Court concluded that no violation of Article 6§1 ECHR could be identified, since the applicant himself had not

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
			registered in Cyprus. Due to the failure to repay his debt, the company sued before the Cypriot courts, which decided in the applicant's absence to issue a judgment ordering him to pay. At the request of the company, the Latvian courts issues an enforcement order and only then the applicant became aware of the Cypriot decision. The applicant did not challenge the decision of the Cypriot court but the enforcement order before the Latvian courts. He tried to block the enforcement by invoking the 'public order' clause of Article 43§2 of the Brussels I	decision.	implying that it effectively lacked any discretion on the issue. **(§49)**	the indirect recognition of the Latvian court's lack of discretion the Court did not proceed into further elaborating on the issue. **(§47)**		shown the proper diligence in order to become aware of his rights of appeal under Cypriot law. **(§§51-54)**

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
			Regulation. The Senate of the Supreme Court of Latvia allowed the enforcement of the Cypriot judgment. The applicant complained that the Latvian courts had breached his right to a fair hearing (Article 6§1 ECHR) by ordering the enforcement of the Cypriot judgment.					
36	**Habib Ignaoua & Others v. the United Kingdom** **[App no 46706/08]**	2014	Pursuant to a EAW issued by Italian courts against the applicants under the accusation of alleged participation in terrorist organisations, they were arrested in the UK, while the first applicant's asylum application was	The national act under question was the decision of the UK courts to allow the surrender of the applicants to Italy pursuant to the EAW issued.	While the Court at first seemed to recognise that the UK courts retained no discretion in automatically executing the Italian-issued EAW due to the existence of the mutual trust principle, it concluded that mutual trust should be given only some weight and that the UK courts had to make sure that the applicants would not be exposed to the danger of torture/degrading/inhuman	The Court reiterated that under the EAW scheme there was the presumption - based on the principle of mutual trust in the EU- that the Italian authorities would comply with their obligations under the	The Court did not apply the test of manifest deficiencies in order to determine the legality of the EAW system based on which surrender before Italian authorities would take place.	The application was declared inadmissible as manifestly ill-founded. **(§61)**

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			pending. The applicants challenged their extradition (surrender) in Italy alleging that they would face the possibility of return to Tunisia where they would be under the risk of torture and humiliating or degrading treatment (indirect *refoulement* danger). The UK courts did not accept their line of reasoning ordering their surrender to Italy. The applicants complained that the refusal of the UK courts to stay the execution of the EAW issued by the Italian authorities violated their rights under Article 3 ECHR.		treatment. Thus, it recognised a (rather wide) margin of discretion. **(§51, §55)**	Convention when receiving the applicants. However, the Court declared that this presumption could be rebutted in case of sufficient evidence.		

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37	**Amalia Perez v. Germany** **[App no 15521/08]**	2015	The case concerned the dismissal of an employee by the Bonn-based UN Volunteer Programme. The applicant's challenges of the dismissal before the UN Joint Appeals Board and the UN Administrative Tribunal had been unsuccessful. The applicant complained that the inability to challenge her dismissal before the domestic courts violated Article 6 ECHR and that the UN internal procedures did not meet the requirements set by Article 6 ECHR.	The Court reiterated its stance that the fact an IO has its seat in a Contracting Party is not sufficient on its own to attribute the IO's acts to the state in question. **(§§60-61, 63)** In the present case, the Court found that Germany had not directly or indirectly intervened in the dispute. Therefore, no state act could be found. **(§64)**		The ECtHR once again confirmed its competence to examine whether the internal procedures of an IO provide equivalent human rights protection as the one envisaged by the Convention (based on the *Gasparini* case). **(§62, 64)**	The Court found that the applicant had provided many evidence that the UN system had in fact manifest deficiencies compared to the ECtHR but did not proceed further to examine whether the presumption of equivalent protection had been rebutted. The Court referred to the lack of oral proceedings before the competent bodies, the inequality of arms due to the refusal to grant access to specific documents and on the limited	The Court declared the application as inadmissible because the applicant had failed to exhaust the available local remedies. **(§§90, 96, 98)**

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							jurisdiction of the UN-based mechanisms in place. **(§65-66)**	
38	**Roland Klausecker v. Germany** **[App no 415/07]**	2015	The case concerned the rejection by the EPO of the employment application submitted by a disabled candidate. The applicant's effort to challenge the decision failed both before domestic courts and on the international level (before EPO and ILOAT) due to the invocation of EPO's immunity. The applicant complained that by transferring powers to an IO whose procedures were deficient Germany violated his rights under	Concerning the procedures before the German courts, the state involvement was rather obvious. In the case of the international procedures, no state involvement could be identified. **(§§45, 99)** The mere fact that EPO was seated in Germany was not sufficient in order attributed the impugned acts to Germany. **(§80)**	-	The Court reiterated that the transfer of competences to IO is not prohibited by the ECHR and also that it does not exclude the State's potential responsibility for acts in the framework of the IO in question. It also confirmed the expansion of its competence to examine whether the internal procedures of an IO provide an equivalent level of human rights protection pursuant to its *Gasparini* case law. **(§§94-97)**	The Court examined whether the EPO system showcased any manifest deficiencies. It concluded that despite the fact that job applicants' claims could not be examined in their merits, the fact that he had been offered a plausible alternative, i.e labour arbitration, did not result in any manifest deficiency **(§§102-103, 106)**	With no manifest deficiencies found, the application was declared inadmissible as manifestly ill-founded **(§§106-107)**

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			Article 6 ECHR.			In the specific case, the Court found that both the EPO and ILOAT adhered to the protection of human rights, especially taking into consideration the ILOAT declaration for the protection of human rights. **(§100-101)**		
39	**Avotiņš v. Latvia** **[App no 17502/07]**	2016	*See* Case No. 34.	*See* Case No. 34.	In response to the applicant claiming that Latvia enjoyed a wide margin of discretion, the Respondent-State as well as the European Commission, argued that due to the nature of the EU act being implemented, i.e. a Regulation, the State maintained no margin of discretion. Additionally, no margin of appreciation could be identified concerning the referral of a request for a preliminary ruling to the ECJ, since the applicant had not required it and the Latvian courts could not act *proprio motu*. Lastly, the	**1. The applicant** claimed that since the Latvian court did not request a preliminary ruling by the CJEU, it had not employed the entire potential of the EU legal order and therefore no presumption of 'equivalent protection' could be established. **2. The interveners**	Since the application of relevant EU law was so obvious, the Respondent-State claimed that it was not necessary to refer a preliminary question to the CJEU according to its own case law. However, in the matter of deficiency, the Court noted that it a	The Court conclude that the *Bosphorus* presumption was applicable since no margin of discretion could be awarded to the Latvian courts. Then, concerning the issue of manifest deficiency, the Court considered that the mutual trust principle obliged the EU Member States to presume that fundamental rights are observed by the other Member States, thus automatically enforcing judgments. The ECtHR stressed

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					Court found that the grounds for refusing to execute a judgment within the Brussels I Regulation system, are limited, precise and subject to elaborated by the CJEU conditions. Also, even though Article 34§1 could potentially lead to the stay of enforcement, the Court concluded that since this was not raised by the applicant before the Latvian Supreme Court, the Court was not in case to decide whether it should be applied. **(§101, §106)**	argued that the applicant did not seek the submission of a request for a preliminary ruling by the CJEU. 3. **The Court** concluded that the EU legal order provides equivalent protection for fundamental rights in both substantive and procedural levels. Especially concerning the latter, the Court clarified that the submission of requests for preliminary rulings before the CJEU should not be treated with excessive formalism, meaning that it should not be expected for the application of	crucial issue that needs to be present is the existence of the possibility to review the decision based on the gravity of the crime. Secondly, the Court found that the Latvian courts could and should have examined if the applicant had had the possibility to receive a remedy. **(§113-125)**	out though that mutual trust should not apply in an automatic and blind manner which could endanger the protection of human rights. In the instances of the present case, it noted that once a claim of manifest deficiency is raised, the executing courts should act. Additionally, Latvian courts were under the obligation to verify the existence or not of available to the applicant remedies before the Cypriot courts. Nevertheless, no manifest deficiency was found since the applicant had shown no due diligence on employing the entire EU judicial mechanism (no request for a preliminary referral to the CJEU) and because of his inaction to challenge

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						the *Bosphorus* presumption that state courts should always and without an exception submit preliminary referrals to the CJEU. Additionally, the ECtHR concluded briefly that providing with reasons for refusing to refer a preliminary question to the ECJ is not crucial when examining the equivalent protection offered by the EU legal order but only when determining whether Article 6§1 ECHR had been violated. **(§§105-112)**		the Cypriot judgment. **(§§125-127)**
40	**Al-Dulimi & Montana Management Inc. v. Switzerland** **[App no 5809/08]**	2016	*See* Case No. 33.	*See* Case No. 33.	The Court considered that Switzerland did not face any conflict of obligations between the ECHR and the UN Charter, which	Since the Court recognised a certain margin of discretion to the State it	-	The Court concluded that Switzerland had violated its obligations under Article 6§1 ECHR.

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					could engage Article 103 of the latter; thus, Switzerland was able to apply both rules freely. **(§140, §149)**	declared that there is no reason for the application of the equivalent protection test. **(§149)**		**(§§153-155)**
41	**Sévère v. Austria** **[App no 53661/15]**	2017	The case concerned the illegal removal of two children by their mother from France to Austria without the father's consent. The father brought a case before the Austrian courts in order to secure the return of the children. However, the Austrian courts eventually did not enforce the return of to France due to the fear of the children suffering psychological harm. The applicant complained that this refusal,	The subsequent refusal of the Austrian courts to enforce their decision for the children's return to France.	The Court considered that Austria enjoyed a (wide) margin of discretion in deciding whether the execution of a return order could jeopardise the psychological or physical integrity of the children. Thus, it departed from the mutual trust logic envisaged in the Brussels II*bis* Regulation. **(§100, §112)**	-	-	The Court found Austria in violation of Article 8 ECHR because the change of circumstance in the present case had been the result of Austria's own failure to take all measures that could in order to facilitate the enforcement of the return order in the first place. **(§§115-117)**

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			despite the fact that French authorities had been adequately prepared to secure the children's best interests, violated his right to family life (Article 8 ECHR).					
42	**Royer v. Hungary** **[App no 9114/16]**	2018	The case concerned the illegal taking of the applicant's son from France to Hungary by his mother and the refusal of the Hungarian courts to recognise and enforce a judgment of return issued by the French courts in accordance with Article 11§8 Brussels Regulation II*bis*. The applicant complained that this refusal violated his right to family life under Article 8 ECHR.	The refusal of the Hungarian court to recognise and enforce the French courts' judgments ordering the child's return was the impugned act.	The Court recognised the discretion of the Hungarian courts to review whether the automatic recognition/enforcement of the judgment ordering the return violated the child's fundamental rights, thus implicitly accepting that Article 11§8 of the Brussels II*bis* Regulation did not impose strict obligations to EU Member States. **(§50)**	Since the Court recognised a margin of discretion to the Hungarian courts no reference to the doctrine of equivalent protection or the *Bosphorus* case-law was made. The Court only once referred to *Avotiņš v. Latvia* where the presumption of equivalent protection had been crucial for the Court.	-	The Court concluded that no violation of Article 8 ECHR could be found. **(§§61-63)**

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43	**Pirozzi v. Belgium** **[App no 21055/11]**	2018	The case concerned the execution by the Belgian authorities of an Italian-issued EAW after the applicant was found guilty of drug trafficking. The applicant was convicted *in abesntia* but was represented by his lawyers before the Italian courts. The applicant complained that the execution of the EAW issued during an *in absentia* trial which could not be challenged before the Italian courts violated his rights to a fair trial (Article 6§1 ECHR).	The execution of the EAW by the Belgian authorities.	The Court initially declared that the Belgian executing the EAW were obliged to presume that the Italian courts had respected fundamental rights, thus enjoying practically no margin of discretion. However, it continued that if a claim of manifest deficiency concerning the protection of fundamental rights was raised before them, the Belgian authorities were obliged to examine it. **(§§62-64)**	The ECtHR recognised that as a general principle the EAW mechanism, which is based on the principles of mutual recognition of judicial decisions and mutual trust, was presumed to provide an equivalent level of human rights protection as the one established by the ECHR. **(§§57-61)**	The Court found no manifest deficiency that could overturn the presumption of equivalent protection enjoyed by the EAW framework. **(§67)**	The Court concluded that the Belgian authorities had fulfilled their obligations under Article 6§1 ECHR by reviewing the merits of the applicant's claims and determining whether the execution of the EAW would compromise his rights. **(§§70-72)**
44	**O.C.I. & Others v. Romania** **[App no 49450/17]**	2019	The case concerned the return of illegally removed children from Hungary to Italy. The	The judgment of the Romanian courts to recognise the Italian decision concerning the	The Court reiterated its stance in the *Royer v. Hungary* case that no point in the Brussels II*bis* Regulation obliged the Romanian courts to send	The Court did not refer to the issue of 'equivalent protection' of the *Bosphorus*	-	The Court found Romania in violation of Article 8 ECHR. **(§§47-49)**

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			children's father initiated procedures before the Romanian courts, which issued a judgment ordering the return of the children, especially mentioning that Italian authorities were capable to protect the children in case of abuse (based on the mutual trust doctrine of the Brussels II*bis* Regulation). The applicants alleged that the decision of the Romanian courts violated their rights under Article 8 ECHR.	return of the children to Italy.	the children wrongfully removed back to a (potentially) abusive domestic environment, just because this request was based on the mutual trust scheme of EU legislation. **(§§45-46)**	case at all (since discretion had been recognised and reiterated here).		
45	**Romeo Castaño v. Belgium** **[App no 8351/17]**	2019	The case concerned the enforcement by the Belgian authorities of a EAW which was issued by the	The impugned act was the refusal of the Belgian authorities to execute the EAW issued by the Spanish courts.	The Court recognised that the Belgian courts enjoyed a (wide) margin of discretion. More precisely, it declared that the Belgian courts were obliged -under Belgian	Even though the Court recognised a wide margin of discretion to Belgium, thus not applying the	In order for the presumption to be rebutted (or not) the Court did not require the	The Court concluded that by not providing sufficient reasons for the non-execution of the EAW violated Article 2 ECHR.

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			Spanish courts against a person accused of participation in a terrorist organisation and the murder of the applicant's father. The Belgian courts refused to execute the issued EAW twice, due to the fear that the individual's confinement conditions would violate her rights under Article 3 ECHR. The applicant complained to the ECtHR that the Belgian authorities' refusal to execute the issued EAW violated his rights under Article 2 ECHR, since the Spanish authorities were hindered from prosecuting his		law and not the EAW framework- to make sure that the principle of mutual trust will not apply automatically in a manner that would endanger the individual's rights. **(§84, §89)**	*Bosphorus* case law, it reiterated that the mutual trust system was based on the presumption that the Member State issuing an EAW respects the fundamental rights. **(§83)**	Belgian authorities to determine the existence of manifest deficiencies; on the contrary, it applied a stricter threshold, i.e. whether the execution would violate the individual's rights. **(§83)**	However, it clarified that the judgment did not oblige the Belgian authorities to surrender the alleged perpetrator to the Spanish ones. **(§§91-92)**

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			father's murder suspect.					
46	**Ilias & Ahmed v. Hungary** **[App no 47287/15]**	2019	The case concerned two Bangladeshi asylum seekers who arrived in a transit zone between Hungary and Serbia and were detained there for twenty-three days. They applied for asylum while in the transit zone, but their applications were rejected without being properly examined due to the designation of Serbia as a 'safe third country', and they were eventually escorted back to it. The applicants complained that their detention in the transit zone, the conditions during this	The impugned acts in question concerned holding the applicants in the transit area, forbidding them to enter Hungary, deciding not to assess the merits of their asylum request, relying on there being a safe third country, and declaring Serbia to be a safe third country	The Court recognised that the impugned acts did not fall within Hungary's strict international obligations since they were imposed to it by EU Directives. Thus, a wide margin of appreciation was recognised to Hungary. Specifically, on the matter of the designation of Serbia as a 'safe third country' the Court specifically mentioned that this act should rely on decisions concerning an individual asylum seeker, must be sufficiently supported at the outset by an analysis of the relevant conditions in that country and, in particular, of its asylum system. Therefore, the Court specifically reiterated that due to the wide margin of appreciation recognised to the State by EU law, the *Bosphorus* presumption could not be applied. **(§§96-97)**	-	-	The Court concluded that the expulsion of the applicants back to Serbia violated Article 3 ECHR since it had failed to assess the potential risks of sending the specific individuals back to Serbia. Concerning the detention conditions in the transit zone, the ECtHR found no violation. **(§194)**

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			detention as well their expulsion in Serbia had violated their rights under Article 3 ECHR.					
47	**Konkurrenten.no AS v. Norway** **[App no 47341/15]**	2019	The case concerned the complaints raised by the applicant company before the European Free Trade Association (EFTA) Court about a wrongful State aid that unfairly benefited the competition. The EFTA Court dismissed the application as inadmissible for lack of *locus standi*, considering that their market position had not been substantially affected by the aid in question. The applicant complained before the Court	No national acts could be identified in the present case, since the complaint concerned the proceedings before the EFTA Court and because no act of the Respondent State in relation with the procedure could be discerned. **(§§39-40)**	Since no state act was identified, the Court did not examine the issue of discretion. However, when explaining the conditions for the application of the *Bosphorus* presumption, it reiterated that it is applicable only when the States act based on strict international obligations **(§42)**	The Court reiterated that the ECHR does not prohibit the transfer of competences to IO as long as they secure equivalent protection of human rights. Again, the Court mentioned that the presumption does not dictate that the protection is identical. **(§§39, 42)** The Court also affirmed the expansion of its ability to examine the equivalence of IO internal procedures with the ECHR standards **(§42)**	In examining whether manifest deficiencies could be identified in the EFTA Court procedures, the Court concluded that no deficiencies could be found in principle since the EFTA Court was created based on the principles of the CJEU, it is an independent court and adheres to the standard requirements of decision issuing. **(§45)**	**1. Concerning the EFTA *per se*** The Court declared the application inadmissible *ratione personae* since the EFTA is not a Party to the ECHR. **(§36)** **2. Concerning Norway in particular** The Court declared the application inadmissible as manifestly ill-founded, since no manifest deficiencies were identified **(§49)**

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			that the proceedings before the EFTA Court did not guarantee the threshold of protection as envisaged in Article 6 ECHR. Thus, they claimed, that Norway had violated its obligation by transferring competences to an IO that lack effective protection system.			**<u>Concerning the European Economic Area (EEA) *in general*</u>** The Court declared that in principle the basis for the *Bosphorus* presumption is lacking when it come to EEA law implementation because: (a) no direct effect and no primacy can be identified and (b) the EEA Agreements do not make any reference to international instrument of human rights protection, such as the EU CFR and the ECHR. **(§43)**	**In the present case** no manifest deficiencies were found since the applicant had been actively involved in every step of the judicial process and since the EFTA Court provided him with a reasoned and detailed decision **(§§46-48)**	
48	**Rinau v. Lithuania** **[App no 10926/09]**	2020	The case concerned the illegal removal of a child (the second applicant)	The refusal of the Lithuanian courts and the delays to the execution of the German order	The Court recognised that once national courts, such as the Lithuanian ones, are called to apply a mutual recognition mechanism of	While not explicitly, the Court implicitly seems to refer to the presumption	The Court considered that mutual respect mechanisms	The Court concluded that Lithuania had violated Article 8 ECHR. **(§223)**

Number	Case Title and Application Number	Year	Subject matter of the case	State act/involvement	Margin of appreciation	Equivalence	Manifest deficiency	Outcome
			from Germany to Lithuania by its mother. The father (first applicant) had sought and obtained court decisions in Germany ordering the child's return. He applied before Lithuanian courts for the recognition and enforcement of the German court orders and was eventually allowed to do so in the appeals stage. After many procedures before Lithuanian courts and the submission of a preliminary request before the CJEU, the Lithuanian courts kept delaying the execution. The applicants complained that this delay in	of return.	EU law, such as the Brussels II*bis* Regulation, they are obliged to give full and immediate effect. Thus, no discretion was recognised to Lithuania in the present case. **(§189)**	of 'equivalent protection' established for the legal order of the EU.	should be applied when no manifest deficiencies could be found in the applicable legislation or legal system. What is rather interesting is the fact that the Court recognised that in case a complaint of manifest deficiency is raised before the national courts, then they are obliged to examine this claim and not automatically apply the mutual trust EU legal system. **(§189)**	

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			execution of the German court orders violated their rights under Article 8 ECHR (family life).					
49	**Bivolaru & Moldovan v. France** **[App nos 40324/15 and 12623/17]**	2021	The case concerned the execution of two EAW issued by the Romanian authorities against the applicants. Following his conviction for human trafficking, a EAW against **Mr. Moldovan** was issued by Romanian courts. The applicant was arrested in France, where he challenged the execution of the EAW claiming a danger of being subjected to degrading and inhuman treatment if sent back to Romania. The French court	**In both cases** the impugned acts were the French decisions granting the execution of EAWs issued by the Romanian authorities.	**In both cases** the Court considered that the obligations of French authorities were clearly and strictly delineated by the EU legislation concerning EAWs and therefore no discretion could be recognised to them. Therefore, the presumption of equivalent protection could apply. **(§§113-114)**	**a. Concerning Mr. Moldovan** The Court recognised that since no particular interpretation difficulty arose in the case of Mr. Moldovan in light of the established CJEU case law, the French courts were not required to refer the issue to the CJEU for a preliminary ruling. Thus, the presumption of equivalent protection was applicable. **(§115)** **b. Concerning Mr. Bivolaru** The Court	The Court found that in the case of **Mr. Moldovan,** the French courts should have considered the information provided by him as sufficient to confirm the risk of degrading treatment. Also, the French courts should not have relied on the information provided by Romanian authorities which did not address the ECtHR case law concerns regarding	In the case of **Mr. Moldovan**, the Court by rebutting for the first time in its case law the presumption of equivalent protection found France in violation of Article 3 ECHR. **(§126)** In the case of **Mr. Bivolaru**, the Court concluded that the information provided by him were not sufficient to raise concerns of degrading treatment and for this reason the French authorities had not violated Article 3 ECHR by not requesting further information from Romania. **(§§145-6)**

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			after receiving all pertinent information by Romanian authorities decided against his request for the non-execution of the EAW. In 2004, judicial proceedings against **Mr. Bivolaru**, the leader of a spiritual yoga movement, were initiated concerning allegations of sexual relations with a minor. In 2005 he travelled to Sweden where he was recognised as a refugee. In 2013 he was convicted in Romania during an *in abstentia* criminal proceeding and a EAW was issued. He was arrested in Paris			considered that the refugee status of Mr. Bivolaru placed him in an unusual situation and created a novel question for the interrelation between the execution of a EAW and an individual's refugee status. The Court considered that this was a matter that should have been referred to the CJEU; since the French authorities had not done so, the ECtHR considered that the full potential of the EU judicial supervisory mechanism had not been fully deployed, thus not applying the *Bosphorus* presumption for	prison facilities' overcrowding while at the same time they contained stereotypical references. Thus, the Court concluded that manifest deficiencies existed which were sufficient to rebut the equivalent protection presumption. **(§§117-126)**	

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			where he challenged the execution of the EAW against him claiming that his refugee status in combination with his spiritual identity would put him in a risk of inhuman and degrading treatment in Romania. The French Court of Cassation dismissed his claims stating that his refugee status did not preclude his surrender to Romania pursuant to the EAW framework. Both applicants complained that the execution of their respective EAWs by the French authorities violated their rights under			the second applicant. **(§§130-132)**		

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			Article 3 ECHR.					