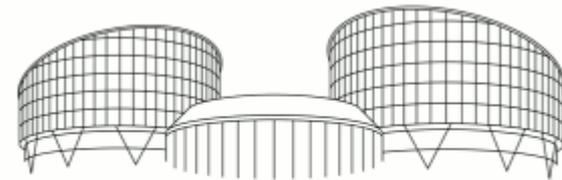




# ECJ and ECHR



EUROPEAN COURT OF HUMAN RIGHTS

# Cooperation or conflict?

Florence, 5th March 2018

Doeke Kingma, Court of Justice Amsterdam



# Article 6 TEU



1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union (...), which shall have the same legal value as the Treaties.

(...)

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(...)

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.



# Asylum cases

ECHR 21 January 2011:

M.S.S. v. Belgium and Greece (application 30696-09)

ECJ 21 December 2011:

N.S. and others v. Home Department (C-411/10 and C-493/10)

# ECJ 26 February 2013:

Melloni v. Ministerio Fiscal (C-399/11)

56 The interpretation envisaged by the national court at the outset is that Article 53 of the Charter gives general authorisation to a Member State to apply the standard of protection of fundamental rights guaranteed by its constitution when that standard is higher than that deriving from the Charter (...)

57 Such an interpretation of Article 53 of the Charter cannot be accepted.

58 That interpretation of Article 53 of the Charter would undermine the principle of the primacy of EU law (...)

# OPINION 2/13 OF THE COURT (Full Court) 18 December 2014

176. In particular, the judicial system as thus conceived has as its keystone the preliminary ruling procedure provided for in Article 267 TFEU, which, by setting up a dialogue between one court and another, specifically between the Court of Justice and the courts and tribunals of the Member States, has the object of securing uniform interpretation of EU law (...).

177. Fundamental rights, as recognised in particular by the Charter, must therefore be interpreted and applied within the EU in accordance with the constitutional framework referred to in paragraphs 155 to 176 above.

# ECJ 26 February 2013:

Alkagaren v. Akerberg Franson (C-617/10)

44 (...) Consequently, European Union law does not govern the relations between the ECHR and the legal systems of the Member States, nor does it determine the conclusions to be drawn by a national court in the event of conflict between the rights guaranteed by that convention and a rule of national law (...).

47 Furthermore, in accordance with Article 267 TFEU, a national court hearing a case concerning European Union law the meaning or scope of which is not clear to it may or, in certain circumstances, must refer to the Court questions on the interpretation of the provision of European Union law at issue (...).

# ECHR 23 May 2016:

Avotins v. Latvia (application 17502.07)

116. (...) In this spirit, where the courts of a State which is both a Contracting Party to the Convention and a Member State of the European Union are called upon to apply a mutual recognition mechanism established by EU law, they must give full effect to that mechanism where the protection of Convention rights cannot be considered manifestly deficient. However, if a serious and substantiated complaint is raised before them to the effect that the protection of a Convention right has been manifestly deficient and that this situation cannot be remedied by European Union law, they cannot refrain from examining that complaint on the sole ground that they are applying EU law.

121. (...) the applicant complained that he had not received any summons or been notified of the Cypriot judgment.(... ) that raised the question of the availability of that legal remedy in Cyprus in the circumstances of the present case. In such a situation the Senate (the national court) was not entitled (...) to remain silent on the issue of the burden of proof with regard to the existence and availability of a remedy in the State of origin (...) This approach (...) could in theory lead to a finding that the protection afforded was manifestly deficient such that the presumption of equivalent protection of the rights of the defence guaranteed by Article 6 § 1 is rebutted.



Thank you for your attention

Doeke Kingma

