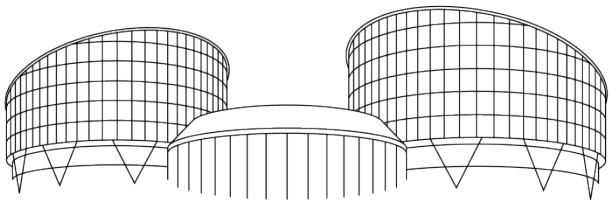

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

RESEARCH UNIT

The case-law of the European Court of Human Rights on employment disputes in international organisations

(updated 7 July 2025)

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

This report was prepared by the Research Unit (in French only) under the supervision of the Directorate of the Jurisconsult and does not bind the Court. The first version of this report was finalised on 1 December 2014, and this update covers the Court's case law up to 7 July 2025.

This English translation has been prepared by the Registry of the Administrative Tribunal of the Council of Europe

SUMMARY

This report presents an analysis of the case-law of the European Court of Human Rights concerning employment disputes in international organisations. This case-law, though limited, falls within the broader framework of the principles developed by the Court regarding international organisations and the responsibility of States Parties to the Convention arising from their membership in an international organisation (notably the European Union and the United Nations).

In the specific context of employment disputes in international organisations, two types of cases can be distinguished:

a) cases in which the issue concerns the jurisdictional immunity of international organisations before national courts;

b) cases in which the internal decisions or employment dispute settlement procedures of the international organisation in question are directly challenged.

While in the first category of cases, the responsibility of the State Party to the ECHR arises from the recognition by its own courts of the immunity of the organisation concerned, in the second category, the issue of State responsibility is more problematic. In this type of case, the Court generally declares the application incompatible *ratione personae*, in the absence of any direct or indirect intervention by the respondent State. However, when the applicant alleges a structural deficiency in the internal mechanism of the international organisation concerned, the Court may examine whether that mechanism is in flagrant contradiction with the rights guaranteed by the Convention, or, in other words, whether it is tainted by a manifest deficiency in light of the Convention.

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INTRODUCTION

1. The European Court of Human Rights (hereinafter "the Court") has been called upon to rule on disputes between international civil servants and the international organisations employing them. In most cases, the Court has held that it lacked jurisdiction *ratione personae* and declared the applications inadmissible because of the absence of a jurisdictional link between the act of the international organisation concerned (for example, a dismissal or a decision of the administrative tribunal of the international organisation) and the respondent State. However, in some cases, the Court has accepted to examine the merits of the complaints brought before it, particularly when the respondent State was involved in some way in the dispute, or where it was alleged that the protection of fundamental rights offered by the international organisation in question was not "equivalent" to that guaranteed by the Convention.

2. This case-law, although limited, flows logically from the Court's broader case-law on international organisations and the responsibility of States Parties to the Convention for actions or omissions of the international organisations of which they are members. It is therefore necessary first to identify the general principles developed by the Court in this context, particularly with regard to EU law and Security Council resolutions of the United Nations (I). We will then examine the case-law dealing specifically with employment disputes within international organisations, in which the Court has adopted different approaches depending on the circumstances (II).

3. However, before going further, it must be emphasized that the Court cannot entertain applications lodged directly against international organisations, since they possess a distinct legal personality and are not parties to the European Convention on Human Rights (ECHR) (*Boivin v. 34 Council of Europe Member States (dec.), no. 73250*/01, 9 September 2008, concerning Eurocontrol; *Stephens v. Cyprus, Turkey, and the United Nations (dec.), no. 45267/06, 11 December* 2008)[1]. Consequently, such applications are, in principle, declared incompatible *ratione personae* with the provisions of the Convention under its Article 35 § 3 (a). The focus here is not the responsibility of the international organisation as such, on which the Court cannot rule, but the possible individual or collective responsibility of its member States under the Convention.

[1] Except for the European Union, on the day when it accedes to the ECHR.

I. General Case-Law of the Court on International Organisations

A. The criterion of "equivalent protection": cases in which the national application of European Union law is at issue

4. The principles of case-law concerning the responsibility of States Parties to the Convention, in respect of actions or omissions arising from their membership in an international organisation, were set out in the judgment *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* ([GC], no. 45036/98, ECHR 2005 VI). In that judgment, the Court established that although the Convention does not prohibit States Parties to the ECHR from transferring sovereign powers to an international organisation in order to pursue cooperation in certain fields of activity, the States nevertheless remain responsible under Article 1 of the Convention for all acts and omissions of their organs, even where these derive from the need to comply with international legal obligations (ibid., §§ 152-153). The Court acknowledged that absolving Contracting States completely from their Convention responsibility in the areas covered by such a transfer would be incompatible with the purpose and object of the Convention; the guarantees of the Convention could be limited or excluded at will, thereby depriving it of its peremptory character and undermining the practical and effective nature of its safeguards (ibid., § 154). In order to reconcile the two aspects—international cooperation through international organisations on the one hand, and State responsibility under the ECHR on the other—the Court developed what is called the criterion of "equivalent protection", formulated in the relevant passages of the *Bosphorus* judgment:

> «155. In the Court's view, State action taken in compliance with such legal obligations is justified as long as the relevant organisation is considered to protect fundamental rights, as regards both the substantive guarantees offered and the mechanisms controlling their observance, in a manner which can be considered at least equivalent to that for which the Convention provides (see *M. & Co.*, cited above, p. 145, an approach with which the parties and the European Commission agreed). By "equivalent" the Court means "comparable"; any requirement that the organisation's protection be "identical" could run counter to the interest of international cooperation pursued (see paragraph 150 above). However, any such finding of equivalence could not be final and would be susceptible to review in the light of any relevant change in fundamental rights protection.
>
> 156. If such equivalent protection is considered to be provided by the organisation, the presumption will be that a State has not departed from the requirements of the Convention when it does no more than implement legal obligations flowing from its membership of the organisation.

> However, any such presumption can be rebutted if, in the circumstances of a particular case, it is considered that the protection of Convention rights was manifestly deficient. In such cases, the interest of international cooperation would be outweighed by the Convention's role as a "constitutional instrument of European public order" in the field of human rights (see *Loizidou v. Turkey* (preliminary objections), judgment of 23 March 1995, Series A no. 310, pp. 27-28, § 75)[2]. »

5. In that case, the Court considered, after analysing the safeguards put in place by Community law regarding fundamental rights, that the protection offered by that law was "equivalent" to that guaranteed by the Convention. It therefore held that Ireland could be presumed not to have departed from its Convention obligations when implementing those arising from its membership of the European Community (ibid., § 165). Furthermore, there was nothing in the case to suggest that the protection of the applicant company's rights had been manifestly deficient; accordingly, the presumption of Convention compliance by the respondent State was not rebutted (ibid., § 166). The Court therefore concluded that the impugned measure (the seizure in Ireland, pursuant to a Community regulation, of an aircraft leased by the applicant company) had not entailed a violation of the right to property guaranteed by Article 1 of Protocol No. 1 to the Convention.

6. This presumption of "equivalent protection" was subsequently applied to similar cases involving the national application of EU law, where the respondent State, as an EU member, had no discretion in implementing its legal obligations stemming from membership of the Union (see, for example, *Coopérative des agriculteurs de Mayenne and Coopérative laitière Maine-Anjou v. France* (dec.), no. 16931/04, 10 October 2006; *Établissements Biret et Cie S.A. and Biret International v. 15 EU Member States* (dec.), no. 13762/04, 9 December 2008; *Povse v. Austria* (dec.), no. 3890/11, 18 June 2013; *Avotiņš v. Latvia* [GC], no. 17502/07, 23 May 2016; *Bivolaru and Moldovan v. France*, nos. 40324/16 and 12623/17, 25 March 2021), see, *a contrario*, where the respondent State did retain a margin of discretion in applying EU law, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§ 338-

[2] The Court drew inspiration from the cases *M. & Co. v. Federal Republic of Germany* (no. 13258/87, decision of the European Commission of Human Rights, 9 February 1990, concerning the *exequatur* in Germany of a judgment of the CJEC) and *Matthews v. the United Kingdom* ([GC], no. 24833/94, § 32, ECHR 1999 I, concerning the exclusion of Gibraltar's inhabitants from the right to vote in elections to the European Parliament under an annex to the 1976 Act on the election of representatives to the European Parliament by direct universal suffrage). In the former, the Commission affirmed that "*the transfer of competences to an international organisation is not incompatible with the Convention, provided that, within that organisation, fundamental rights receive equivalent protection*." In *Matthews*, the new Court held that "*the Convention does not exclude the transfer of competences to international organisations provided that Convention rights continue to be "secured"* " (§ 32).

340, ECHR 2011; *Michaud v. France*[3], no. 12323/11, §§ 112-116, ECHR 2012; and *Tarakhel v. Switzerland*[4] [GC], no. 29217/12, §§ 88-91, 4 November 2014). The Court also applied this presumption in a case directly concerning the fairness of proceedings before the Court of Justice of the European Communities (CJEC), where the respondent State's involvement had been limited to making a preliminary ruling (see *Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands* (dec.), no. 13645/05, 20 January 2009).

7. As the Court recalled in the case of *Michaud* (cited above), the presumption of "equivalent protection" is intended, in particular, to ensure that a State Party is not faced with a dilemma when it is obliged to rely on the legal obligations incumbent on it as a result of its membership of an international organisation which is not party to the Convention and to which it has transferred part of its sovereignty, in order to justify its actions or omissions arising from such membership vis-à-vis the Convention (ibid., § 104). The presumption also serves to determine in which cases the Court may, in the interests of international cooperation, reduce the intensity of its supervisory role with regard to observance by the States Parties of their engagements arising from the Convention. It follows from these aims that the Court will accept such an arrangement only where the rights and safeguards it protects are given protection comparable to that afforded by the Court itself (ibid., § 104).

B. The particular case of the United Nations

8. As regards the United Nations (UN), it is necessary to distinguish between two categories of acts concerning which the Court has been called upon to rule on the responsibility of a State Party to the ECHR: actions and omissions attributable to UN organs in the context of maintaining international peace and security, and international sanctions decided by its Security Council and implemented by States Parties to the ECHR.

9. In 2007, the Court held that the responsibility of States Parties to the ECHR could not be engaged for actions and omissions of multinational peacekeeping forces created or authorised by the Security Council under Chapter VII of the UN Charter. Such actions and omissions are directly

[3] In that case, the Court particularly emphasised that, unlike in *Bosphorus Airways*, the national courts had not referred a preliminary question to the Court of Justice of the European Union, so the relevant international mechanism for reviewing respect for fundamental rights—normally equivalent to that of the Convention—had not been able to deploy its full potential.

[4] Although Switzerland is not a member State of the EU, it was bound by the Dublin Regulation (establishing the criteria and mechanisms for determining the State responsible for examining an asylum application lodged in an EU State by a third-country national) by virtue of an association agreement with the European Community.

attributable to the UN, as a universal organisation pursuing the aim of collective security (see *Behrami and Behrami v. France* and *Saramati v. France, Germany and Norway* (dec.) [GC], nos. 71412/01 and 78166/01, § 151, 2 May 2007, concerning the actions and omissions of UNMIK and KFOR in Kosovo[5]; see also *Ioannides v. Cyprus*, no. 32879/18, § 103, 16 January 2025, concerning peacekeeping operations following Türkiye's invasion of Cyprus; contrast *Al-Jedda v. the United Kingdom* [GC], no. 27021/08, §§ 74-86, ECHR 2011, concerning the actions of British armed forces in Iraq[6]). The Court stressed that these cases differed from *Bosphorus* in that the impugned facts had not occurred on the territory of the respondent States and had not resulted from decisions taken by their authorities, noting the fundamental difference between the EU and the UN (*Behrami and Saramati*, cited above, § 151). It stated:

> « 149. (...) Since operations established by UNSC Resolutions under Chapter VII of the UN Charter are fundamental to the mission of the UN to secure international peace and security and since they rely for their effectiveness on support from member states, the Convention cannot be interpreted in a manner which would subject the acts and omissions of Contracting Parties which are covered by UNSC Resolutions and occur prior to or in the course of such missions, to the scrutiny of the Court. To do so would be to interfere with the fulfilment of the UN's key mission in this field including, as argued by certain parties, with the effective conduct of its operations ».

10. The same reasoning was applied in cases concerning bodies created by the UN Security Council under Chapter VII of the Charter, such as international civil administrations or international criminal tribunals present on the territory of a Contracting State (see, in particular, *Berić and Others v. Bosnia and Herzegovina* (dec.), nos. 36357/04, 36360/04, 38346/04, 41705/04, 45190/04, 45578/04, 45579/04, 45580/04, 91/05, 97/05, 100/05, 101/05, 1121/05, 1123/05, 1125/05, 1129/05, 1132/05, 1133/05, 1169/05, 1172/05, 1175/05, 1177/05, 1180/05, 1185/05, 20793/05 and 25496/05, ECHR 2007, case that concerned acts of the High Representative for Bosnia and Herzegovina, whose authority derived from UN Security Council resolutions; *Galić v. the Netherlands* (dec.), no. 22617/07, 9 June 2009; and *Blagojević v. the Netherlands* (dec.), no. 49032/07, 9 June 2009, concerning proceedings before the International Criminal Tribunal for the former Yugoslavia (ICTY), created by a UN Security Council resolution and seated

[5] The applicants' complaints were declared incompatible *ratione personae* with the Convention (see also *Kasumaj v. Greece* (dec.), no. 6974/05, 5 July 2007). It is noteworthy that, in the cases of *Behrami* and *Saramati*, the applicants argued—relying on *Bosphorus*—that the protection of fundamental rights provided by KFOR was not "equivalent" to that secured by the Convention.

[6] In the case of *Al-Jedda*, by contrast with the cases of *Behrami* and *Saramati*, the UN Security Council neither exercised effective control nor ultimate authority and control over the acts and omissions of the multinational force soldiers (*Al-Jedda*, cited above, § 84).

in the Netherlands[7]). In these cases, the Court found that the applicants' complaints were incompatible *ratione personae* with the Convention.

11. By contrast, when it comes to national measures taken by Contracting States to implement sanctions decided by the UN Security Council (under Chapter VII of the Charter), the Court's jurisdiction *ratione personae* is not in question. In such situations, the responsibility of Contracting States under the Convention may be engaged in respect of their acts or omissions arising from the application of UN law, as in cases concerning national implementation of EU law (see *Nada v. Switzerland* [GC], no. 10593/08, §§ 117-123, ECHR 2012, concerning a ban preventing the applicant from transiting through Switzerland, imposed under a federal order implementing UN Security Council resolutions on the Taliban).

12. In *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC] (no. 5809/08, 21 June 2016), the Grand Chamber examined an application directed against a federal order implementing a UN Security Council resolution aimed at imposing a series of measures on Member States with a view to stabilising and developing Iraq. The resolution obliged States to "freeze without delay" the financial assets and economic resources of the former Iraqi government and of certain persons or entities allegedly linked to it, and to transfer them immediately to the Development Fund for Iraq. The applicants complained, inter alia, that the Swiss courts had limited their review to verifying whether their names appeared on the sanctions list and whether the assets in question belonged to them.

13. The Court reiterated that it is not its role to pass judgment on the legality of the acts of the UN Security Council. However, where a State relies on the need to apply a Security Council resolution in order to justify a limitation on the rights guaranteed by the Convention, it is necessary for it to examine the wording and scope of the text of the resolution in order to ensure, effectively and coherently, that it is consonant with the Convention (§ 139). The Court presumed that the Security Council did not intend to impose any obligation on member States to breach fundamental principles of human rights. In the event of any ambiguity in the terms of a UN Security Council resolution, the Court must therefore choose the interpretation which is most in harmony with the requirements of the Convention and which avoids any conflict of obligations. In the light of the United Nations' important role in promoting and encouraging respect for human rights, it is to be expected that clear and explicit language would be used were the Security Council to intend States to take measures which would be particularly likely to conflict with

[7] Although the Court did not apply the presumption of "equivalent protection" to the ICTY, it took note of the fact that this tribunal had been established by an organisation based on respect for fundamental rights and that the essential procedural rules governing its functioning were intended to provide adequate guarantees (*Galić*, cited above, § 46).

their obligations under international human rights law. The Court therefore concluded that where a Security Council resolution does not contain any clear or explicit wording excluding or limiting respect for human rights in the context of the implementation of sanctions against individuals or entities at national level, it must always presume that those measures are compatible with the Convention. In particular, it held that it would in principle conclude that there was no conflict of obligations capable of engaging the primacy rule in Article 103 of the UN Charter (§ 140). Moreover, where a resolution such as that in the present case does not contain any clear or explicit wording excluding the possibility of judicial supervision of the measures taken for its implementation, it must always be understood as authorising the courts of the respondent State to exercise sufficient scrutiny so that any arbitrariness can be avoided. The Court thus limited its scrutiny to arbitrariness, in order to strike a fair balance between the necessity of ensuring respect for human rights and the imperatives of the protection of international peace and security (§ 146).

14. In that case, the Court found that Switzerland was not faced with a real conflict of obligations. This finding made it unnecessary for the Court to determine the question of the hierarchy between the obligations of the States Parties to the Convention under that instrument and those arising from the UN Charter. The respondent State therefore had to show that it had attempted to take all possible measures to adapt the sanctions regime to the individual situation of the applicants, at least guaranteeing them adequate protection against arbitrariness (§ 149). The Court found that this had not been the case, as the Swiss authorities had failed to examine the substance of the applicants' appeal. It therefore concluded that there had been a violation of Article 6 § 1 of the Convention.

C. Other international organisations

15. In the case of *Rambus Inc. v. Germany* ((dec.), no. 40382/04, 16 June 2009), the issue was the fairness of proceedings before the organs of the European Patent Office (EPO). While noting the lack of direct involvement of Germany in the proceedings and expressing doubts about its own competence *ratione personae*, the Court observed that the grant or revocation of a European patent had direct effects within the legal systems of the member States of the organisation, including Germany. It therefore presumed its jurisdiction and applied the criterion of "equivalent protection" within the meaning of the *Bosphorus* judgment, "assuming it to be applicable." The Court considered that the protection afforded by the European Patent Office was not tainted by any "manifest deficiency" and accordingly found the

application manifestly ill-founded[8]. Although *Rambus* is an example of applying the criterion of "equivalent protection" to an organisation other than the EU, in the context of international proceedings without direct intervention by the respondent State, no general principles can be drawn from it, since the Court's jurisdiction and the applicability of the *Bosphorus* doctrine were only presumed.

16. In the case of *Konkurrenten.no AS v. Norway* ((dec.), no. 47341/15, 5 November 2019), a company operating in the express bus market in Norway challenged before the Court of the European Free Trade Association (EFTA) the legality of a subsidy allegedly paid by the State to one of its competitors. The EFTA Court declared the application inadmissible, holding that the applicant company's commercial position had not been substantially affected by the subsidy and that it lacked standing. The company complained before the European Court of Human Rights that this rejection had violated its right of access to a court and its right to a fair trial. Since the EFTA was not a party to the Convention, the Court considered the application *prima facie* incompatible *ratione personae*. It held that European Economic Area law did not, in principle, benefit from the presumption of equivalent protection (§ 43). However, the issue was not whether Norway was responsible for implementing that law, but whether it was responsible for the alleged denial of access to a court by the EFTA Court when it dismissed the applicant's case. Such responsibility could only come into play if, and to the extent that, the alleged violation can be attributed to a structural shortcoming in the procedural guarantees afforded under the organisational and procedural regime of the EFTA Court. The Court therefore examined whether there was a "manifest deficiency" in the procedural guarantees of the EFTA Court. It did not consider that the application had disclosed any appearance of any manifest deficiencies in the protection of the applicant's Convention rights. First, given that the EFTA Court is meant to be a judicial body similar to the Court of Justice of the European Union, and that its functioning is governed by essential procedural principles inspired by those of the CJEU, the only starting point can be that there are no such manifest deficiencies. The applicant had not rebutted this strong presumption: the Court found that it had been fully involved in the proceedings before the EFTA Court and had had every opportunity to plead the admissibility of its application. Secondly, the Court noted that the EFTA Court gave detailed reasons as to why the applicant did not have legal standing in accordance with the applicable rules.

[8] The Court here followed positions already expressed by the German Federal Constitutional Court and by the European Commission, which, in *Lenzing AG v. Germany* (decision of 9 September 1998, no. 39025/99), had already found "equivalent protection" in respect of the European Patent Convention.

II. The Court's case-law on employment disputes in international organisations: between incompatibility *ratione personae* and limited review

A. Jurisdictional immunity of international organisations before the national courts of States Parties to the ECHR

17. A first category of cases has concerned employment disputes in international organisations brought before the Court in relation to the jurisdictional immunity of international organisations before the national courts of States Parties to the ECHR. In *Waite and Kennedy v Germany* ([GC], no. 26083/94, ECHR 1999 I) and *Beer and Regan v. Germany* ([GC], no. 28934/95, 18 February 1999), the German courts had declared the applicants' actions inadmissible on the basis of the jurisdictional immunity enjoyed by the organisation employing them (the European Space Agency). Implicitly accepting its competence *ratione personae* since the contested decisions had been taken by German courts, the Court examined the question of jurisdictional immunity under Article 6 § 1 of the Convention (right of access to a court). It acknowledged that the attribution of privileges and immunities to organisations, free from unilateral interference by a government, is an essential means of ensuring their proper functioning. However, it held that the immunity from jurisdiction of an international organisation is only admissible under Article 6 § 1 where the restriction it entails is not disproportionate. The proportionality assessment must be carried out in the light of the specific circumstances of each case. In those cases, the Court examined whether the applicants had available to them reasonable alternative means to protect effectively their rights under the Convention (*Waite and Kennedy*, cited above, § 68). It concluded that they had such alternative remedies, in particular before the Appeals Board of the European Space Agency[9]. Accordingly, it found that the restrictions on access to German courts had not impaired the very essence of the applicants' right to a court (ibid., § 73).

18. This approach was subsequently followed in the cases of *López Cifuentes v. Spain* (dec.), no. 18754/06, 7 July 2009, and *Chapman v. Belgium* (dec.), no. 39619/06, 5 March 2013. *López Cifuentes* concerned the Spanish courts' recognition of the jurisdictional immunity of the International Olive Council,

[9] The applicants could also have brought damages proceedings before the German courts against the companies which had seconded them to the European Space Agency. In *Beer and Regan* (*Beer and Regan v. Germany and the Member States of the European Space Agency* (dec.), no. 70009/01, 15 May 2003), the applicants lodged appeals before ESA Appeals Board and reached friendly settlements before a German labour court with the companies that had employed and seconded them to ESA.

an international organisation headquartered in Madrid[10]. *Chapman* concerned the Brussels Employment Tribunal's recognition of the immunity of the North Atlantic Treaty Organisation (NATO), headquartered in Brussels[11]. The Court held that, in view in particular of the remedies available to the applicants within the international organisations concerned (the Administrative Tribunal of the International Labour Organisation (ILO) for the International Olive Council, and NATO Appeals Board), the restrictions on access to the respondent States' courts had not impaired the very essence of their right of access to a tribunal under Article 6 § 1 of the Convention[12]. It is worth noting that in the Belgian case the applicant argued that there was a general doctrinal and judicial tendency to limit the immunity of international organisations to acts of "public authority" and to exclude disputes relating to employment contracts. The Court, however, did not accept that argument.

19. In the case of *Klausecker v. Germany* ((dec.), no. 415/07, 6 January 2015), the applicant had applied for a post of a patent examiner at the European Patent Office (EPO). Having lost his left hand, his left eye, and part of his fingers, he suffered from 100% disability. Following a medical examination, the EPO decided not to recruit him. He requested that the President of the EPO review the decision. The President informed him that he could bring the matter before the Administrative Tribunal of the International Labour Organisation, which was the highest instance for examination of employment disputes in the EPO. That Tribunal, however, had previously declared inadmissible a similar complaint concerning a refusal to recruit a candidate who did not meet the physical requirements for the post. Alleging discrimination on grounds of disability, the applicant lodged a constitutional complaint with the German Federal Constitutional Court, which rejected it as inadmissible on the basis of the EPO's jurisdictional immunity[13].

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[10] The applicant had been subjected to disciplinary proceedings within the International Olive Council and then brought proceedings before the Administrative Tribunal of the ILO (competent for disputes between that organisation and its employees), which dismissed his complaint.

[11] The applicant had sued NATO before the Belgian courts, seeking recognition of an indefinite term employment contract binding him to NATO. Yet he had not applied to NATO Appeals Board, which was available to him even after he left service.

[12] In both cases, the Court declared the complaint inadmissible as manifestly ill-founded in application of *Waite and Kennedy* case-law, even though the reasoning in *López Cifuentes* decision was extremely brief.

[13] A similar dispute was brought to the Court in the case of *Coisson v. Germany* ((dec.), no. 19555/10, 29 January 2019). The applicant had applied for a post of a patent examiner at the EPO. His application was rejected after a medical examination, as he suffered from a congenital heart defect requiring several surgical interventions. Like in the case of *Klausecker*, the applicant had no effective remedies of challenging the refusal before domestic courts because of the EPO's immunity. However, the Court dismissed the

20. Regarding the alleged lack of access to the German Federal Constitutional Court to obtain a review of the EPO's refusal to recruit him, the Court found that the applicant fell within Germany's jurisdiction within the meaning of Article 1 of the Convention (§ 45). In this case, the applicant had been denied an examination of the merits of his complaint because of the immunity from jurisdiction enjoyed by the EPO. Such immunity from jurisdiction, according to the Court, constituted a procedural bar preventing him from having his complaint examined by the court (§ 51). Referring to *Waite and Kennedy*, *Beer and Regan*, and *Chapman*, the Court recalled that when States establish international organisations for cooperation in certain fields of activities, and they attribute competences to those organisations and grant them immunities, there may be implications as to the protection of fundamental rights. It would be contrary to the object and purpose of the Convention if Contracting States were thereby absolved from their responsibility under the Convention in relation to the field of activity in question. It should be recalled that the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective. This is particularly true for the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial (§ 63). To determine whether immunity from jurisdiction was permissible under the Convention, the Court had to consider whether the applicant had another reasonable means to protect effectively his rights (§ 64). The Court considered that granting immunity from German courts pursued the legitimate aim of ensuring the proper functioning of the international organisation (§ 67). It noted, however, that the applicant's complaint was not reviewed on the merits by any tribunal or other body. As an external candidate, he had no standing to challenge the decision internally at the EPO or before the ILO Administrative Tribunal, which does not have jurisdiction to examine complaints of external candidates for employment (§ 68). Nonetheless, the EPO had offered to submit the matter to arbitration under the rules applicable before the ILO Administrative Tribunal. The Court considered this offer to be a reasonable opportunity for the applicant to have his complaint examined on the merits (§ 71). It further recalled that the proportionality test could not be applied in such a way as to compel an international organisation to submit to the labour law of the host State (§ 72).

21. Another decision confirmed this approach. In the case of *Kokashvili v. Georgia* ((dec.), no. 21110/03, 1 December 2015, the OSCE Office in Tbilisi had terminated the applicant's contract after she requested and obtained maternity leave. She brought proceedings before the Georgian courts, which asserted jurisdiction, holding that international organisations did not enjoy immunity in labour disputes. The Georgian courts thus applied

application for being out of time, as the applicant had failed to comply with the six-month time-limit for lodging his application (§ 31).

Georgian labour law. However, following intervention by the Georgian Ministry of Foreign Affairs, the judgment was never enforced. The applicant complained that this failure to enforce the judgment violated her right of access to a court under Article 6 § 1 of the Convention. The Court recalled that the Convention must be interpreted in harmony with other rules of international law, including those relating to the respect for jurisdictional immunity of States and international organisations (§ 33). Confirming its decision in the case of *López Cifuentes*, the Court also reiterated that attribution of privileges and immunities to organisations is an essential means of ensuring the proper functioning of such organisations free from unilateral interference by governments (§ 34). Moreover, the Court noted that it was not aware of any trend of relaxation of jurisdictional immunity of international organisations with respect to their internal employment disputes occurring on the soil of hosting countries (§ 35). The Court further recalled that for a restriction on access to court to be proportionate, a material factor is existence of an alternative internal remedy available to the applicant (§ 36). OSCE's internal rules did provide for a possibility of alternative, internal means of resolution of employment related disputes. The applicant could have appealed the termination to the Internal Review Board and, if necessary, to the quasi-judicial body, the Panel of Adjudicators (§ 37). Thus, the applicant had a reasonable alternative opportunity of having her dispute adjudicated internally within the OSCE's organisational setting. Therefore, her right of access to a court had not been violated.

22. The existence of an internal and accessible alternative remedy for the applicant therefore appears to be a determining factor in assessing whether the jurisdictional immunity of the international organisation concerned is compatible with the Convention[14].

[14] The decision in *Stichting Mothers of Srebrenica and Others v. the Netherlands*, 11 June 2013 (dec.), no. 65542/12, ECHR 2013 (extracts), although in a very different context and unrelated to employment disputes (concerning UN immunity for operations mandated by Security Council resolutions under Chapter VII of the UN Charter—in that case, UNPROFOR operations in Srebrenica in 1995), nevertheless nuances this reasoning, to the extent that the Court accepted the UN's immunity, recognised by the Dutch courts, despite the absence of any remedy within UN law. It clarified that, in the absence of any remedy, recognising immunity does not *ipso facto* violate the right of access to a court, as *Waite and Kennedy* and *Beer and Regan* cannot be interpreted in absolute terms. However, the specific features of *Stichting Mothers* make comparison with cases on employment dispute in international organisations difficult. Following the logic of *Behrami and Behrami*, the Court held that bringing operations established by Security Council resolutions under Chapter VII of the United Nations Charter within the scope of domestic jurisdiction would be to allow individual States to interfere with the fulfilment of the key mission of that organisation of maintaining international peace and security (*Stichting Mothers*, cited above, § 154). The Netherlands were therefore under no obligation to provide a remedy against the United Nations in its own courts (*ibid*., § 165).

B. The individual or joint responsibility of States Parties to the ECHR for measures taken within the legal order of the international organisation of which they are members

23. The judgment of *Matthews v. the United Kingdom* of 18 February 1999 ([GC], no. 24833/94, ECHR 1999 I) set out, in relation to State responsibility under EU primary law for measures taken directly by the institutions or organs of international organisations of which they are members, principles which have formed the basis of subsequent reflections and arguments on the question of the individual or joint responsibility of States Parties to the ECHR. In that judgment, the Court held that "the United Kingdom, together with all the other parties to the Maastricht Treaty, is responsible *ratione materiae* under Article 1 of the Convention and, in particular, under Article 3 of Protocol No. 1, for the consequences of that Treaty" (*Matthews*, cited above, § 33)[15]. Prior to that decision, the Court had regularly avoided pronouncing on this issue, declaring inadmissible, on grounds unrelated to "jurisdiction" or State responsibility[16], cases relating to acts of international organisations.

(1) Incompatibility *ratione personae*

24. In the decision in the case of *Boivin v. 34 Member States of the Council of Europe* ((dec.), cited above), the Court for the first time addressed its competence *ratione personae* in relation to an employment dispute strictly within the legal order of an international organisation. The applicant challenged before the Court a judgment of the ILOAT (the Administrative Tribunal of the International Labour Organisation) upholding the annulment of his appointment as a civil servant with the European Organisation for the Safety of Air Navigation (Eurocontrol). As there had been no direct or

[15] This has been interpreted as an embryonic form of collective responsibility of member States for acts of the international organisations to which they belong (see, e.g., A. Bultrini, "*La responsabilité des États membres de l'Union européenne pour les violations de la Convention européenne des droits de l'homme imputables au système communautaire* (The responsibility of EU Member States for violations of the European Convention on Human Rights attributable to the Community system)," *Revue trimestrielle des droits de l'homme*, no. 49, January 2002, p. 23).

[16] See, for example, *Société Guérin Automobiles v. 15 EU Member States* (dec.), no. 51717/99, 4 July 2000), *Segi and Others and Gestoras Pro Amnistía and Others v. 15 EU Member States* (dec.), nos. 6422/02 and 9916/02, 23 May 2002), *Senator Lines GmbH v. 15 EU Member States* [GC] (dec.), no. 56672/00, 10 March 2004), and *Emesa Sugar N.V. v. the Netherlands* (dec.), no. 62023/00, 13 January 2005). These cases were rejected for incompatibility *ratione materiae* or for lack of victim status of the applicants.

indirect involvement of France or Belgium[17] in the case, the Court found that the applicant did not fall within the "jurisdiction" of those States under Article 1 of the Convention. Accordingly, without examining the merits of the complaints under Articles 6, 13, 14 and Article 1 of Protocol No. 1, it declared the application incompatible *ratione personae*. The Court nevertheless noted that the applicant had not alleged that the overall protection provided by Eurocontrol was not "equivalent" to that guaranteed by the Convention within the meaning of the *Bosphorus* case-law, but merely contested the individual decisions taken in his case by the ILOAT. With this observation, the Court therefore seemed to pave the way for the recognition of its jurisdiction when a structural deficiency in the internal mechanism of the international organisation in question is alleged and the applicant does not merely complain about specific decisions taken against him.

25. The Court reaffirmed the approach taken in *Boivin* in other decisions concerning employment disputes in various international organisations: a disciplinary procedure within the European Union, ultimately reviewed by the Court of Justice of the European Communities (*Connolly v. 15 EU Member States* (dec.), no. 73274/01, 9 December 2008); a disciplinary procedure before the Administrative Tribunal of the Council of Europe (*Beygo v. 46 Member States of the Council of Europe* (dec.), no. 36099/06, 16 June 2009[18]; *Dalvy v. 47 Member States* (dec.), no. 61548/21, 23 May 2023[19]); a disciplinary procedure within the International Olive Council, reviewed by the ILOAT (*López Cifuentes*, cited above, §§ 22–30); a refusal to recruit a candidate by the European Patent Office (*Klausecker v. Germany* (dec.), no. 415/07, 6 January 2015); and a disciplinary procedure within the EU institutions (*Andreasen v. the United Kingdom and 26 other EU Member States* (dec.), no. 28827/11, 31 March 2015).

26. In most cases, applicants sought to establish the joint responsibility of the States Parties to the ECHR which were also members of the relevant organisation (*Boivin*, *Connolly*, *Beygo*). In *López Cifuentes*, however, the application was directed only against the host State of the organisation (Spain

[17] Only the States for which the case was examined, as the application had been declared inadmissible as out of time with regard to the other 32 respondent States. It should be noted that the applicant held dual French and Belgian nationality.

[18] In this case, the applicant contested the lack of independence and impartiality of the Administrative Tribunal of the Council of Europe. However, the Court noted that the applicant had not alleged that the respondent States failed in their Convention obligations by not ensuring, at the time of transferring competences to the Council of Europe, a system of protection "equivalent" to that secured by the Convention.

[19] In this case, the applicant claimed to have been deprived of a court that would decide on her claim for full compensation for alleged harm. The Court found, however, that this complaint was essentially directed against the decision of the Administrative Tribunal of the Council of Europe, the only body that had examined her dispute with the Council of Europe. At no time had any of the respondent States intervened, directly or indirectly, in the dispute.

in that case). The Court held that the same approach applied in both situations: a territorial link was insufficient to attribute to the host State the acts of the international organisation headquartered there.[20].

(2) Application of the criterion of "equivalent protection": a limited review of the internal mechanisms of international organisations

27. In *Gasparini v. Italy and Belgium* (dec.), no. 10750/03, 12 May 2009, the Court developed the approach outlined in *Boivin* by accepting, for the first time, that an internal employment dispute in an international organisation might engage the responsibility of its member States under the Convention. The applicant, an Italian national and employee of NATO (headquartered in Brussels), alleged that proceedings before NATO's Appeals Board (NAB) concerning staff contributions to the pension scheme had not satisfied requirements of Article 6 of the Convention, particularly as to the requirement of public hearings. He criticised the NAB for not holding public sessions. He also questioned the independence of members of this body, which were appointed by NATO's decision-making body, the North Atlantic Council. He argued that, as a result, the process of appointment of members of the NAB was difficult to reconcile with the concept of independent and impartial tribunal. In general, he complained that Belgium, as NATO's host State, and Italy, as his State of nationality, had failed to ensure that this organisation, at the time of its creation, had established an internal judicial system that was compatible with the requirements of the Convention.

28. The Court started with recalling the principles set out in the cases of *Bosphorus* and *Boivin*, and established the following rule regarding the attribution of acts of an international organisation to a State which is a Party to the ECHR and a member of that organisation:

> « (...) a Contracting State cannot be held responsible for an alleged violation of the Convention by reason of a decision or measure emanating from an organ of an international organisation of which it is a member, insofar as it has not been established, or even alleged, that the protection of fundamental rights afforded by that organisation is not 'equivalent' to that secured by the Convention, and

[20] See also, for other cases involving the host State of an international organisation or subsidiary body (outside the field of employment disputes), *Galić v. the Netherlands* (dec.), no. 22617/07, 9 June 2009), and *Blagojević v. the Netherlands* (dec.), no. 49032/07, 9 June 2009), concerning ICTY proceedings; and *Djokaba Lambi Longa v. the Netherlands* (dec.), no. 33917/12, ECHR 2012), concerning the International Criminal Court. In all three, the Court held that the mere location of those tribunals in the Netherlands was insufficient to engage its responsibility under the Convention, and declared the applications incompatible *ratione personae*. See also *Klausecker v. Germany* (dec.), no. 415/07, 6 January 2015, § 80, where the Court reiterated that the mere fact that the EPO's contested decision was taken in Germany, where it is headquartered, did not suffice to bring the dispute within Germany's jurisdiction.

provided that the State in question has neither directly nor indirectly intervened in the commission of the act complained of».

29. Applying these principles, the Court noted that, unlike the cases of *Boivin* and *Connolly*, the applicant alleged a structural deficiency in the internal mechanism of the international organisation in question. The Court therefore had to examine whether that mechanism was tainted by a "*manifest deficiency*." Having regard to all relevant provisions of the NAB mechanism[21] and the principles flowing from its own case-law on the complaints raised by the applicant[22] , the Court found that two respondent States "*could reasonably consider, when approving the civilian personnel regulations and annexes to it through their permanent representatives on the North Atlantic Council, that the rules governing proceedings before the NAB satisfied the requirements of a fair trial.*" It concluded that "*the protection afforded to the applicant in this case by NATO's internal dispute resolution mechanism was therefore not vitiated by a "manifest deficiency" (...), particularly in the specific context of an organisation such as NATO*". Accordingly, the presumption of compliance with the Convention by Italy and Belgium was not rebutted within the meaning of the *Bosphorus* case law. Therefore, the Court declared the application inadmissible for being manifestly ill-founded.

30. The importance of *Gasparini* lies in its recognition that the responsibility of States under the Convention may be engaged by virtue of their membership in an international organisation, and in particular their transfer of sovereign powers. In that case, it was established that such transfer occurred when Italy and Belgium, through their permanent representatives on the North Atlantic Council, approved NATO's civilian personnel regulations and their annex on internal dispute resolution mechanism of this organisation.

31. However, once the possibility of invoking the liability of Member States of the organisation concerned has been recognised, the Court's review is limited to verifying whether, at the time of the transfer of sovereignty, the member states established a mechanism for settling internal disputes within the organisation that is not in manifest contradiction with the Convention. This is thus a limited review, leading to a finding of violation only where there is a flagrant contradiction with the Convention or a manifest deficiency

[21] Notably, one provision allows parties to the dispute to "attend the hearings and present orally any arguments in support of their written submissions [and] be assisted or represented either by a member of NATO's civilian or military staff or by counsel of their choice" (Article 4.72 of the Annex to NATO's Civilian Personnel Regulations), as well as provisions on the appointment of members of the NAB, who must be entirely external to NATO and of "established" competence (Article 4.11 of the Annex).

[22] Notably, the Court's case-law on the requirement of public hearings under Article 6 (*Jussila v. Finland* [GC], no. 73053/01, CEDH 2006‑XIV ...).

in the system set up within the international organisation. The Court expressed it in following way:

> « The Court considers that it must approach the question in light of the principles developed in its case-law in respect of the domestic courts of respondent States. However, its review in determining whether proceedings before the NAB, an organ of an international organisation with its own legal personality and not a party to the Convention, are tainted by a manifest deficiency is necessarily less extensive than that exercised under Article 6 with respect to proceedings before the domestic courts of States Parties to the Convention, that are compelled to respect its provisions. In reality, the Court must determine whether, at the time they joined NATO and transferred sovereign powers to it, the respondent States could in good faith consider that NATO's mechanism of internal employment dispute resolution was not in flagrant contradiction with the provisions of the Convention. »

32. In more recent cases, the Court confirmed the reasoning of the *Gasparini* decision, carrying out a limited Convention review of internal employment dispute resolution mechanisms of international organisations. And this is based solely on the transfer by Member States of part of their sovereign powers to the international organisation in question, for example when they create, through their representatives sitting on the organisation, an internal dispute settlement or judicial mechanism within the organisation. Applicants must, however, complain in a substantiated manner about manifest deficiencies in the internal appeal proceedings that they wish to challenge (see, e.g., *Andreasen v. the United Kingdom and 26 other EU Member States* (dec.), no. 28827/11, 31 March 2015, § 70).

33. In the case of *Klausecker v. Germany* (dec.), no. 415/07, 6 January 2015, the circumstances of which were described above, the Court recalled the principles of *Bosphorus*, *Boivin* and *Gasparini* (§§ 92-97). While the applicant based his argument on the exclusion of persons who had been refused recruitment and on the absence of an internal body of law protecting human rights, the Court pointed out that the Convention did not require full access to a court to challenge the refusal to recruit a person to the public service. Furthermore, the fact that an international organisation does not dispose of a binding catalogue of fundamental rights as such does not warrant the conclusion that it lacks a protection of fundamental rights equivalent to that under the Convention system as long as the organisation at issue effectively protects those rights in practice. It was uncontested that the Administrative Tribunal of the ILO protected fundamental rights in its case-law (§ 100). The Court considered that the applicant's lack of access to a procedure for challenging the decision not to recruit him did not reveal any manifest deficiency in the protection of his fundamental rights by the EPO (§ 106). It also recalled that limitations to the right of access to court by granting immunity from jurisdiction to international organisations were proportionate to the legitimate aim of strengthening international cooperation, in particular,

if the persons concerned had available reasonable alternative means to effectively protect their rights (§ 104). The applicant's right of access had not been impaired, particularly given the offer of arbitration made by the EPO (§ 105).

34. In the case of *Perez v. Germany* (dec.), no. 15521/08, 6 January 2015, the applicant contested the termination of her UN contract following poor performance evaluations. She alleged proceedings before the UN internal bodies were characterised by manifest procedural deficiencies. She argued that Germany, by granting the UN immunity from jurisdiction, had failed to guarantee her access to a fair and public hearing by an independent and impartial tribunal. The Court noted that the fact alone that the decision of the UN Secretary-General took effect on German territory where the applicant was employed was insufficient to bring it within German jurisdiction (§ 63). Furthermore, Germany had never intervened in the proceedings in question, which remained purely internal before the UN bodies (§ 64). The Court noted that the applicant forwarded a number of reasons why the internal administration of justice within the UN in labour disputes in force at the relevant time was manifestly deficient. In particular, the applicant had not been given a hearing and had not had access to crucial documents on which the United Nations Administrative Tribunal had relied. The Court noted that the procedural shortcomings complained of by the applicant had been confirmed in a report by independent experts requested by the Secretary-General of the United Nations (§ 65). The Court nevertheless decided to leave open the question of whether there had been a manifest deficiency in the UN internal proceedings, finding that the applicant had failed to exhaust domestic remedies, such as lodging a constitutional complaint in Germany (§§ 87–90).

35. In the case of *Dalvy v. 47 Member States* ((dec.), no. 61548/21, 23 May 2023), the applicant was employed by the Council of Europe. She lodged an appeal with the Administrative Tribunal of the Council of Europe seeking a ruling that the administration had been negligent and had failed to protect her, and seeking full compensation for the damage she had suffered as a result of psychological harassment in the workplace. Invoking Article 6 § 1 of the Convention and referring to the rules for appointing judges to the Administrative Tribunal of the Council of Europe, the applicant complained that the respondent States had failed in their obligation to provide her with protection equivalent to that envisaged by the Convention, insofar as they had not ensured that the dispute resolution mechanism established within the Organisation met the standards of impartiality required of courts. In this case, with a former judge of the Court presiding in her case, the applicant saw a significant risk of being judged by someone with whom she had worked, who knew her, or who had heard of her.

36. The Court distinguished this case from *Beygo v. 46 Member States* (dec.), no. 36099/06, 16 June 2009, in which the applicant challenged the lack

of independence and impartiality of the Administrative Tribunal of the Council of Europe without claiming that the respondent States had failed to fulfil their obligations under the Convention by not providing, when transferring their powers to the Council of Europe, a system of protection "equivalent" to that provided by the Convention. On the contrary, according to the applicant, the member states had failed to ensure that the dispute settlement mechanism established within the Organisation met the standards of impartiality required of courts (§ 26). The Court considered that this complaint should be examined in the light of the principles set out in the *Gasparini* decision, in which it had to determine whether the responsibility of States Parties to the Convention could be engaged under that Convention for acts or omissions relating to their membership of an international organisation (§ 27). The Court therefore examined whether the remedy available before the Administrative Tribunal of the Council of Europe was vitiated by a "manifest deficiency" such as to overturn the presumption that the respondent States had complied with their obligations under the Convention. More specifically, it had to determine whether, at the time they transferred certain sovereign powers to the Council of Europe, the respondent States could have considered in good faith that the dispute settlement mechanism was not contrary to the provisions of the Convention (§ 28). In this case, the Court considered that, while it was true that neither the Statute nor the Rules of Procedure of the Administrative Tribunal of the Council of Europe provided for the possibility for an applicant to request the recusal of a judge called upon to decide his or her case, the system in place was nonetheless capable of ensuring effective protection at least equivalent to the right to be tried by an impartial tribunal (§ 33). It therefore did not consider that the remedy before the Administrative Tribunal was vitiated by a "manifest deficiency." Consequently, the respondent States were entitled to consider, at the time of the transfer of their sovereign powers, that the provisions governing proceedings before the Administrative Tribunal of the Council of Europe satisfied the requirements of a fair trial. In conclusion, the applicant was not justified in criticising the respondent States for having subscribed to a system contrary to the Convention (§37).

CONCLUSION

37. In conclusion, the principles emerging from the Court's case-law on employment disputes in international organisations may be summarised as follows:

– the Court lacks competence *ratione personae* to entertain applications brought directly against international organisations of which the States Parties to the ECHR are members;

– the Court may, however, be competent to examine cases involving the jurisdictional immunity of international organisations before the national courts of States Parties to the ECHR. In such cases, the Court must assess whether the restriction on access to national courts is proportionate in the light of the specific circumstances, having regard in particular to the availability of alternative remedies within the international organisation concerned;

– the Court declares itself incompetent *ratione personae* where an applicant complains of an individual decision taken within an international organisation without any direct or indirect involvement of the States Parties to the ECHR. Such decisions fall within the legal order of the organisation itself, and States Parties to the ECHR which are members of that organisation cannot be held responsible for them;

– the Court may, however, examine—where an applicant alleges a structural deficiency in the internal mechanism of the international organisation concerned—whether the States Parties to the ECHR, when transferring part of their sovereign powers to that organisation, ensured that the rights guaranteed by the ECHR received protection equivalent to that secured by the Convention system. Such review by the Court is a limited one, confined to determining whether the mechanism established within the international organisation was not in flagrant contradiction with the rights guaranteed by the ECHR.