Conference "75th anniversary of the ECHR and administrative court judges"

OPENING REMARKS

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Ladies and Gentlemen, dear participants to this conference,

It is both a privilege and an honour to address you today on the occasion of the seventy-fifth anniversary of the European Convention on Human Rights. This milestone invites us not only to celebrate the achievements of this important European legal instrument, but also to reflect critically on its enduring significance for both administrative justice, and those us responsible for giving concrete effect to its principles in daily adjudication.

When the Convention was drafted in 1950, its signatories could scarcely have anticipated the breadth of public authority—and its regulation—that would emerge in Europe over the following decades. Administrative law lies precisely at the frontier between public power and individual rights. It is here that the standards developed by the European Court of Human Rights (ECtHR) have been most transformative.

Although the ECHR was not initially designed for administrative law, the Strasbourg court has consistently affirmed that administrative proceedings fall within the protective scope of Article 6(1), which guarantees a fair trial in the determination of "civil rights and obligations." Landmark judgments such as *Ringeisen v. Austria* (1971) [1], by adopting an autonomous interpretation of Article 6 of the ECHR, extended this article-s scope to a wide range of administrative procedures. In doing so, the ECHR recognised that civil rights may be determined not only by civil courts in the traditional sense, but also by administrative jurisdictions. This was a crucial turning point, affirming that procedural guarantees of fairness, impartiality, and timeliness are fully applicable in administrative adjudication – at least when it comes to enforcing civil rights and obligations.

As regards the institution which I represent, the Court of Justice of the European Union (CJEU), the breadth of EU law means that judges in ensuring that the law is correctly interpreted and applied wear many hats: civil, criminal, or constitutional judge, not to mention the various sub-categories of these fields. One of the many functions of the CJEU is that of an *administrative* court.

When it comes to the Convention and EU law, we know that, the Union itself is, at present, not a party to the Convention, although all of its 27 Member States are. As a result, the Convention does not and cannot directly apply in proceedings before the EU Court of Justice. Nor does our court attempt to interpret it in an authoritative manner, as this is a matter for the Strasbourg court.

[1] See Judgment of the European Court of Human Rights (Chamber), Ringeisen v. Austria (Merits), Application no. 2614/65, 16 July 1971.

The legal answer to this situation was provided by the European Court of Human Rights in the Bosphorus case. [2] The 'Bosphorus Presumption,' asserts that measures adopted by EU Member States under legal obligations from EU law offer equivalent protection to the ECHR unless manifestly deficient. Conversely, the EU Court of Justice, via Article 52(3) of the EU Charter of Fundamental Rights regularly interprets the Charter in light of Strasbourg standards. This gives the Strasbourg court considerable influence on the case-law and methodology of our Luxembourg court. When the meaning of a Charter right is unclear or under challenge, the CJEU has relied explicitly on ECtHR decisions to clarify interpretation and strengthen legitimacy. In this way, I believe that the reference to Strasbourg standards serves both to ensure 'judicial harmonisation' and as a way to potential fill gaps in EU legal protection.

Without intending to prejudge the specific topics for discussion in this conference, I would like to illustrate this point with a few examples.

The CJEU regularly interprets Charter rights in light of Strasbourg standards (via Article 52(3) CFR), adopting ECtHR reasoning for issues like fair trial guarantees, judicial independence, and procedural safeguards. This judicial dialogue is clear: in areas such as ne bis in idem, the Luxembourg court directly adopts Strasbourg's "close connection in substance and time" test to EU administrative sanction regimes.

Thus, in *Menci*[3] the CJEU ruled on the *ne bis in idem* principle in administrative and criminal law by referencing Article 50 of the Charter. Here, the Court took good care to incorporate the ECtHR's approach in A and B v. Norway[4] which, by stating that dual administrative and criminal penalties may be permissible if closely connected in substance and time, provided important clarifications to the *ne bis in idem* principle.

Similarly, recent cases on the right to an impartial tribunal—such as Commission v Poland[5] - or on legal professional privilege in administrative proceedings – such as Orde van Vlaamse Balies[6]—invoke Article 47 CFR, which is interpreted in light of ECtHR's case-law under Article 6 ECHR. This approach reinforces the impartiality and independence of tribunals overseeing administrative acts, with Article 52(3) CFR functioning as a bridge between the two systems.

But before I get carried away in too many individual decisions, I think I will rest my case here and wish you all a very good and successful conference.

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[2] See Judgment of the European Court of Human Rights (Grand Chamber), *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*, Application no. 45036/98, 30 June 2005.

[3] See Judgment of the Court of Justice (Grand Chamber), *Luca Menci v. Procura della Repubblica*, C-524/15, 20 March 2018.

[4] See Judgment of the European Court of Human Rights (Grand Chamber), *A and B v. Norway*, Application nos. 24130/11 and 29758/11, 15 November 2016.

[5] See Judgment of the Court of Justice (Grand Chamber), *Commission v Poland (Indépendance et vie privée des juges), C-204/21*, 5 June 2023, and Judgment of the Court of Justice (Grand Chamber), *Commission v Poland (Régime disciplinaire des juges), C-791/19*, 15 July 2021.

[6] See Judgment of the Court of Justice (Grand Chamber), *Orde van Vlaamse Balies and Others v. Vlaamse Regering, C-694/20*, 8 December 2022.