



## Refusal to refer a case to the Court of Justice of the European Union did not violate the Convention

In today's Chamber judgment<sup>1</sup> in the case of [Harisch v. Germany](#) (application no. 50053/16) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 6 (right to a fair hearing) of the European Convention on Human Rights.**

The case concerned civil proceedings, during which the applicant requested a referral to the Court of Justice of the European Union (CJEU).

The Court found in particular that the domestic courts' refusal of the referral, which had not appeared arbitrary, had had sufficient reasons.

### Principal facts

The applicant, Klaus Harisch, is a German national who was born in 1964 and lives in Munich (Germany).

Mr Harisch was one of the two founders of T.AG, a directory enquiries service. The T.AG received, for a fee, the required subscriber information from DTAG. In 2007 and 2008 DTAG was ordered to refund the TAG part of the fees paid as they had been excessive.

Mr Harisch brought an action against DTAG, claiming that as a result of the excessive prices paid by the T.AG, he and his cofounder had had to reduce their shares in the company before its stock market launch. For that reason, and also because of a lower valuation of the company on the day of the launch, he had sustained damage. In May 2013 the Regional Court dismissed the claim.

Mr Harisch appealed. During an oral hearing before the Court of Appeal he called for the proceedings to be suspended and for a preliminary CJEU ruling to be obtained. In July 2014 the Court of Appeal dismissed his appeal by giving a detailed reasoning why his legal opinion was not supported by the CJEU's case-law. It also saw no reason to grant leave to appeal on points of law since there was no need to clarify the legal questions raised.

He filed a complaint against the refusal of leave to appeal on points of law, in which he repeated his request for a referral to the CJEU. The Federal Court of Justice rejected it, briefly indicating the reasons for refusing leave to appeal on points of law and dispensed with any further reasoning pursuant to Article 544 § 4 of the Code of Civil Procedure, to which it referred in its decision.

Mr Harisch further filed a complaint concerning a violation of his right to be heard (*Anhörungsfrage*). The Federal Court of Justice also rejected this complaint, stating that a decision by a court of last instance did not require more detailed reasoning. In February 2016 the Federal Constitutional Court declined to consider Mr Harisch's constitutional complaint.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing) Mr Harisch complained about the domestic courts' refusal to refer questions to the CJEU for a preliminary ruling and of a failure to provide adequate reasoning for that refusal.

The application was lodged with the European Court of Human Rights on 19 August 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Yonko **Grozev** (Bulgaria), *President*,  
Angelika **Nußberger** (Germany),  
André **Potocki** (France),  
Mārtiņš **Mits** (Latvia),  
Gabriele **Kucsko-Stadlmayer** (Austria),  
Lətif **Hüseynov** (Azerbaijan),  
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Article 6 § 1

The Court reiterated that the Convention did not guarantee, as such, the right to have a case referred to the CJEU for a preliminary ruling. However, a refusal to grant a referral might be deemed arbitrary in cases where the applicable rules allowed no exception to the granting of a referral or where the refusal was based on reasons other than those provided for by the rules, or where the refusal was not duly reasoned.

The obligation for domestic courts to provide reasons for their judgments was accordingly a vital safeguard against arbitrariness. However, the question of whether or not a court had failed to fulfil this obligation could only be determined in the light of the circumstances of the case. In the Court's view it was acceptable under Article 6 § 1 for national superior courts to dismiss a complaint by mere reference to the relevant legal provision if the matter raised no fundamentally important legal issue, particularly in cases concerning applications for leave to appeal.

The Court firstly observed that the Federal Court of Justice was the court of last resort within the meaning of Article 267 § 3 of the Treaty on the Functioning of the European Union (TFEU), and that it had only given brief reasons for its decision, in accordance with national law.

The Court also observed that the Court of Appeal had earlier examined EU law in detail and had referred extensively to the CJEU's case-law. Moreover, during an oral hearing the issue of EU law had been discussed and the Court of Appeal had explained why there was no reasonable doubt concerning the correct application of German and EU law.

The Court further noted that, based on domestic case-law, a refusal of leave to appeal on points of law included the consideration that a referral to the CJEU was not required in the case in question. It concluded that the Court of Appeal had therefore considered Mr Harisch's referral request and had denied it by refusing leave to appeal on points of law.

Moreover, having regard to the fact that the Court of Appeal had provided detailed reasoning for its decision, after discussing the issue of EU law with the parties, the Court considered that Mr Harisch had been able to understand the Federal Court of Justice's decision.

After examining the proceedings as a whole, the Court held that in the specific circumstances of the case it was acceptable that the Federal Court of Justice had dispensed with providing more

comprehensive reasoning and had merely referred to the relevant legal provisions when deciding on Mr Harisch's complaint against the refusal of leave to appeal on points of law.

Accordingly, there had been no violation of Article 6 § 1.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.