

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

FOURTH SECTION

**CASE OF GONDERT v. GERMANY**

*(Application no. 34701/21)*

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Federal Court of Justice's failure to give reasons for its refusal to make a referral to the Court of Justice of the European Union for a preliminary ruling, despite applicant's explicit request and detailed submissions in that respect

Prepared by the Registry. Does not bind the Court.

STRASBOURG

16 December 2025

**FINAL**

16/03/2026

*This judgment has become final under Article 44 § 2 of the Convention.*
*It may be subject to editorial revision.*



**In the case of Gondert v. Germany,**

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lado Chanturia*, President*,
Faris Vehabović,
Lorraine Schembri Orland,
Anja Seibert-Fohr,
Anne Louise Bormann,
Sebastian Răduleţu,
András Jakab*, judges*,

and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 34701/21) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a German national, Mr Heinz-Günter Gondert ("the applicant"), on 2 July 2021;

the decision to give notice to the German Government ("the Government") of the complaint concerning lack of reasoning under Article 6 § 1 of the Convention and to declare the complaints under Article 8 and Article 1 of Protocol No. 1, read alone and in conjunction with Article 14 inadmissible;

the parties' observations;

Having deliberated in private on 2 December 2025,

Delivers the following judgment, which was adopted on that date:

# INTRODUCTION

1. The case concerns civil proceedings during which the national courts decided not to make a referral to the Court of Justice of the European Union ("the CJEU") for a preliminary ruling, notwithstanding the applicant's explicit request in this respect. The Federal Court of Justice, in dismissing an appeal by the applicant against a refusal of leave to appeal on points of law, referred to the relevant sections of the German Code of Civil Procedure and stated that it had "also examined the question of an obligation to request a ruling in accordance with Article 267 § 3 of the Treaty on the Functioning of the European Union" (TFEU). The case raises issues mainly under Article 6 § 1 of the Convention.

# THE FACTS

2. The applicant was born in 1949 and lives in Bingen. He was represented by Ms D. Quink-Hamdan, a lawyer practising in Berlin.

3. The Government were represented by one of their Agents, Mr H.-J. Behrens, of the Federal Ministry of Justice and Consumer Protection.

4. The facts of the case may be summarised as follows.

5. The applicant, a lawyer, was a partner in the German office of an international law firm based in the United Kingdom until he retired in 2014. The law firm had been set up as a limited liability partnership (LLP) under the law of England and Wales.

6. In 2005 the law firm revised its pension scheme for partners, including the applicant, and in 2006 the law of the United Kingdom was amended to include a new prohibition of discrimination in the workplace, which was subsequently included in the Equality Act 2010. This amendment transposed into the law of the United Kingdom the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, p. 16), and went beyond the scope of the regulations of the directive by including partners of LLPs in the protection.

7. In 2008, following questions about the compatibility of the 2005 pension scheme with the prohibition against age discrimination, the law firm adopted a new scheme. The changes applied to partners eligible for annuity payments under the former 2005 bonus pension scheme. The revised scheme did not provide for any entitlement for partners born before May 1946. For partners born between May 1946 and April 1950, entitlement was assessed on a case-by-case basis with reference to their claims under the 2005 pension scheme, and partners born after April 1950 were entitled to five years of annuity payments. Taking those principles into account, it was determined that the applicant, who had been born in 1949, would receive annuity payments for three years.

8. In February 2014 the applicant brought a claim against the law firm, seeking two further years of annuity payments, amounting to at least 552,000 pounds sterling in total. He argued that the 2008 pension scheme was discriminatory on the basis of age, as other partners, who had been born after April 1950, were entitled to two more years of annuity payments, even if they had not been partners for as long as he had. In the applicant's view, the Equality Act 2010, which implemented Directive 2000/78/EC, applied to the pension scheme and prohibited such discrimination.

9. On 30 October 2014 the Frankfurt am Main Regional Court found in favour of the applicant and held that the difference in treatment in comparison with younger partners born after April 1950 could not be justified. The Regional Court based its decision on the Equality Act 2010, Directive 2000/78/EC and CJEU case-law.

10. On 30 June 2016 the Frankfurt am Main Court of Appeal set aside the Regional Court's judgment and dismissed the applicant's claim. The Court of Appeal accepted that the applicant had been treated less favourably in

comparison with partners born after April 1950, but held that that difference in treatment was justified under Directive 2000/78/EC as interpreted by the CJEU. In accordance with Directive 2000/78/EC, on which the Equality Act 2010 had been based, socio-political aims were legitimate grounds to justify different treatment based on age. Such a justification for different treatment had to be applied *mutatis mutandis* to managerial decisions concerning LLP pension schemes. The new pension scheme, which had had a transitional period and had been devised following open internal discussions involving all the partners, including the applicant, was proportionate. It struck a fair balance between limiting the overall expenses of the pension scheme and preserving the legitimate expectations of the partners. The Court of Appeal refused to grant leave to appeal on points of law, as the case concerned merely the consideration of a specific form of alleged age discrimination under the law of a foreign jurisdiction.

11. The applicant subsequently lodged a complaint against the refusal to grant leave to appeal on points of law with the Federal Court of Justice. He argued that the interpretation of Directive 2000/78/EC by the Court of Appeal had been erroneous and had deviated from the case-law of the CJEU. The difference in treatment based on age could not be justified under EU law as it neither served a legitimate aim, nor was it proportionate. He also complained that the Court of Appeal had not sought a preliminary ruling from the CJEU and, for the first time in the proceedings, asked the Federal Court of Justice to seek such a ruling. In that connection, he formulated four questions relating to the interpretation of Directive 2000/78/EC to be referred to the CJEU. He argued that leave to appeal was necessary to ensure the uniform administration of justice, as set out in Article 543 of the Code of Civil Procedure (see paragraph 14 below).

12. On 9 October 2018 the Federal Court of Justice refused the applicant's leave to appeal

> "... because none of the grounds provided for by law (Article 543 § 2 of the Code of Civil Procedure) whereby the Division may allow an appeal on points of law are present. The legal dispute between the parties is neither of fundamental significance, nor does it require a decision by the court hearing the appeal on points of law for the development of the law or in the interests of ensuring uniform adjudication. The Division has also examined the question of an obligation to refer the matter to the CJEU for a preliminary ruling under Article 267 § 3 TFEU.
>
> The court dispenses with more detailed reasoning pursuant to Article 544 § 4, second sentence, second clause, of the Code of Civil Procedure ..."

13. On 4 February 2021 the Federal Constitutional Court refused to admit a constitutional complaint by the applicant for adjudication, without giving reasons (1 BvR 2573/18). It explained that it was not giving reasons as provided for under section 93d(1) of the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz*) (see paragraph 16 below).

# RELEVANT LEGAL FRAMEWORK AND PRACTICE

## I. GERMAN LAW AND PRACTICE

14. Article 543 of the Code of Civil Procedure reads:

> "(1) An appeal on points of law may only be lodged if:
>
> 1. leave is granted by the appellate court in its judgment, or
>
> 2. the court hearing the appeal on points of law has granted leave upon a complaint against the refusal to grant leave to appeal on points of law.
>
> (2) An appeal on points of law shall be admissible if:
>
> 1. the legal matter is of fundamental significance, or
>
> 2. the further development of the law or the interest in ensuring uniform adjudication requires a decision to be given by the court hearing the appeal on points of law.
>
> The court hearing the appeal on points of law shall be bound by the admission of the appeal by the appellate court."

15. The relevant parts of Article 544 of the Code of Civil Procedure read as follows at the relevant time:

> "(1) Any refusal by the appellate court to grant leave to appeal on points of law may be subject to a complaint (complaint against the refusal of leave to appeal).
>
> ...
>
> (4) The court hearing the appeal on points of law shall rule on the complaint in a corresponding court order. The reasons on which the order is based shall be summarised briefly; that reasoning may be dispensed with where it would not contribute to clarifying the requirements for granting leave to appeal, or where the court finds for the party that lodged the complaint. The decision regarding the complaint shall be served upon the parties."

16. The relevant parts of the Federal Constitutional Court Act read as follows:

**Section 93b**

> "The Chamber may refuse to admit a constitutional complaint or may admit it for adjudication in the case referred to in section 93c. In all other cases, the decision on admission shall be taken by the Division."

**Section 93d**

> "(1) Decisions pursuant to section 93b and section 93c shall be given without an oral hearing. They cannot be appealed against. A refusal to admit a constitutional complaint for adjudication shall not require reasons to be given.
>
> ..."

17. According to the established case-law of the Federal Court of Justice and the Federal Constitutional Court a legal matter is, amongst other reasons, always of "fundamental significance" if it raises a question that requires a

uniform interpretation of EU law, which is relevant for deciding the case, and makes a referral for a preliminary ruling during the appeal proceedings very probable. Therefore, refusal of leave to appeal (on points of law) includes the consideration that a referral to the CJEU is not required in that case (see, for example, Federal Court of Justice, I ZR 130/02, 16 January 2003; Federal Constitutional Court, 2 BvR 557/88, 22 December 1992; 1 BvR 2534/10, 3 March 2014; 1 BvR 1320/14, 8 October 2015).

## II. EUROPEAN UNION LAW AND PRACTICE

18. Article 267 of the Treaty on the Functioning of the European Union (TFEU) provides as follows:

> "The Court of Justice shall have jurisdiction to give preliminary rulings concerning:
>
> (a) the interpretation of the Treaties;
>
> (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;
>
> Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.
>
> Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.
>
> ..."

19. Interpreting this provision, the Court of Justice of the European Communities held in its judgment of 6 October 1982 in *CILFIT* (C-283/81, EU:C:1982:335, paragraph 21):

> "... a court or tribunal against whose decisions there is no judicial remedy under national law is required, where a question of Community law is raised before it, to comply with its obligation to bring the matter before the Court of Justice, unless it has established that the question raised is irrelevant or that the Community provision in question has already been interpreted by the Court or that the correct application of Community law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in the light of the specific characteristics of Community law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the Community."

20. In its judgment of 6 October 2021 in *Consorzio Italian Management and Catania Multiservizi* (C-561/19, EU:C:2021:799), the CJEU confirmed the so-called *CILFIT* criteria and elaborated on the obligation for national courts to give reasons when applying them. It held, in so far as relevant, as follows:

> "33. According to the Court's settled case-law, a national court or tribunal against whose decisions there is no judicial remedy under national law cannot be relieved of that obligation unless it has established that the question raised is irrelevant or that the EU law provision in question has already been interpreted by the Court or that the

correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt (see, to that effect, judgments of 6 October 1982, *Cilfit and Others*, 283/81, EU:C:1982:335, paragraph 21; of 15 September 2005, *Intermodal Transports*, C-495/03, EU:C:2005:552, paragraph 33; and of 4 October 2018, *Commission v France (Advance payment)*, C-416/17, EU:C:2018:811, paragraph 110).

...

51. In that regard, it follows from the system established by Article 267 TFEU, read in the light of the second paragraph of Article 47 of the Charter, that, if a national court or tribunal against whose decisions there is no judicial remedy under national law takes the view, because the case before it involves one of the three situations mentioned in paragraph 33 above, that it is relieved of its obligation to make a reference to the Court under the third paragraph of Article 267 TFEU, the statement of reasons for its decision must show either that the question of EU law raised is irrelevant for the resolution of the dispute, or that the interpretation of the EU law provision concerned is based on the Court's case-law or, in the absence of such case-law, that the interpretation of EU law was so obvious to the national court or tribunal of last instance as to leave no scope for any reasonable doubt."

21. The CJEU confirmed this obligation in its judgment of 15 October 2024 in *KUBERA* (C-144/23, EU:C:2024:881, paragraph 65) in the context of decisions refusing leave to appeal:

"... Article 267 TFEU, read in the light of the second paragraph of Article 47 of the Charter, must be interpreted as meaning that a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law must set out, in its decision refusing an application for leave to appeal on a point of law containing a request that a question concerning the interpretation or validity of a provision of EU law be referred to the Court of Justice for a preliminary ruling, the reasons why that reference was not made, namely that that question is irrelevant for the resolution of the dispute or that the provision of EU law in question has already been interpreted by the Court or that the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt."

22. As regards the institution of preliminary ruling proceedings, the Court of Justice of the European Communities stated in its judgment of 9 October 2008 in *Katz* (C-404/07, EU:C:2008:553):

"37. ... [I]t is for the national court, not the parties to the main proceedings, to bring a matter before the Court of Justice. The right to determine the questions to be put to the Court thus devolves on the national court alone and the parties may not change their tenor ..."

23. In its judgment of 9 November 2010 in *VB Pénzügyi Lízing* (C-137/08, EU:C:2010:659), the CJEU stated:

"28. ... the system established by Article 267 TFEU with a view to ensuring that European Union law is interpreted uniformly throughout the Member States instituted direct cooperation between the Court of Justice and the national courts by means of a procedure which is completely independent of any initiative by the parties ..."

24. On 9 October 2024 the CJEU published its (updated) Recommendations to national courts and tribunals in relation to the initiation

of preliminary ruling proceedings (C/2024/6068). The relevant parts read as follows:

> "3. The jurisdiction of the Court of Justice and of the General Court to give a preliminary ruling on the interpretation or validity of EU law is exercised exclusively on the initiative of the national courts and tribunals, whether or not the parties to the main proceedings have expressed the wish that a question be referred for a preliminary ruling. In so far as it is called upon to assume responsibility for the subsequent judicial decision, it is for the national court or tribunal before which a dispute has been brought – and for that court or tribunal alone – to determine, in the light of the particular circumstances of each case, both the need for a request for a preliminary ruling in order to enable it to deliver its decision and the relevance of the questions which it submits.
>
> ...
>
> 6. Where a question is raised in the context of a case that is pending before a court or tribunal against whose decisions there is no judicial remedy under national law, that court or tribunal is nonetheless required to make a reference for a preliminary ruling (see third paragraph of Article 267 TFEU), unless there is already well-established case-law on the point or unless the correct interpretation of the rule of law in question admits of no reasonable doubt."

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 6 § 1 CONCERNING THE LACK OF REASONING FOR THE NON-REFERRAL OF THE CASE TO THE CJEU FOR A PRELIMINARY RULING

25. The applicant complained about the national courts' refusal to refer the case to the CJEU for a preliminary ruling. He relied on Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

26. The Court notes that the applicant complained about the non-referral of his case to the CJEU by the Federal Court of Justice and that the Convention does not guarantee, as such, the right to have a case referred by a domestic court to another national or international authority for a preliminary ruling (see, in detail and with references, paragraph 35 below). The Court, being the master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), finds it appropriate to examine this complaint under the aspect of a lack of reasoning for the non-referral of the case to the CJEU for a preliminary ruling.

### A. Admissibility

27. The Court considers that the applicant's complaint concerning the lack of reasoning for the non-referral of the case to the CJEU for a preliminary

ruling is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

## B. Merits

### *1. The parties' submissions*

#### (a) The applicant

28. The applicant complained that the domestic courts had not referred the case to the CJEU for a preliminary ruling even though he had set out four specific questions in his submissions to the Federal Court of Justice. That court – as the court of last instance – had not referred to any of the *CILFIT* criteria when refusing leave to appeal on points of law and deciding not to make a referral to the CJEU. The domestic courts had not therefore given sufficient reasons for their decision to refuse to seek a preliminary ruling.

29. The reasons for the refusal could not be inferred from the circumstances of the case and, in particular, from the decision of the Court of Appeal, which had not considered a referral and had not given reasons in its judgment for not seeking a preliminary ruling from the CJEU.

30. The applicant argued that the refusal by the Federal Court of Justice to refer the case to the CJEU for a preliminary ruling had been arbitrary, as its decision had not indicated whether the questions for referral had been examined on the basis of the *CILFIT* criteria and, if they had, on which of those criteria the refusal to refer the case had been based.

#### (b) The Government

31. The Government submitted that the Court of Appeal had not been obliged to request a preliminary ruling from the CJEU, as it was not a court of last instance. In addition, the applicant had not made such a request to the Court of Appeal or formulated any specific questions.

32. As the court of last instance, the Federal Court of Justice had been permitted to refuse a referral request in line with the CJEU's *CILFIT* case-law. In the present case the questions posed by the applicant had not been relevant to the court's ruling.

33. The Federal Court of Justice had not been called upon to adjudicate on an appeal on points of law and thus to decide on the merits, but rather to decide only on the applicant's request for leave to appeal on points of law. The Government argued that in accordance with the Court's case-law, in cases concerning requests for leave to appeal the mere reference to the relevant legal provisions was sufficient to comply with the obligation to provide reasons. Imposing a stricter obligation on the Federal Court of Justice to provide explicit and detailed reasoning when deciding not to refer a matter to the CJEU for a preliminary ruling would thwart the goals of speeding up

proceedings, of preserving the appellate court's capacity to carry out its work in the face of increasing case numbers and of allowing it to concentrate on its core functions in the interests of all those seeking legal protection. Those goals had previously been accepted by the Court as legitimate.

34. Moreover, it was clear from the circumstances and the Federal Court of Justice's decision that that court had duly examined the applicant's questions for referral to the CJEU for a preliminary ruling, as it had explicitly stated so. Given that it had had to decide whether the legal matter was of "fundamental significance" and whether the case raised a question that required a uniform interpretation of EU law which was relevant for deciding the case, it should have been evident to the applicant from the refusal of leave to appeal on points of law that the Federal Court of Justice had based its decision on the absence of necessity, which was one of the *CILFIT* criteria.

*2. The Court's assessment*

**(a) General principles**

35. The Court reiterates that it is for the national courts to interpret and apply domestic law, if necessary in conformity with EU law, and to decide whether it is necessary to seek a preliminary ruling from the CJEU to enable them to give judgment. It reiterates that the Convention does not guarantee, as such, the right to have a case referred by a domestic court to another national or international authority for a preliminary ruling (compare *Coëme and Others v. Belgium*, nos. 32492/96 and 4 others, § 114, ECHR 2000-VII; *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, § 166, 7 May 2021; and *Acar and Others v. Turkey* (dec.), no. 26878/07, § 43, 12 December 2017). The Court has previously observed that this matter is, however, not unconnected to Article 6 § 1 of the Convention since a domestic court's refusal to grant a referral may, in certain circumstances, infringe the fairness of proceedings where the refusal proves to have been arbitrary (see *Ullens de Schooten and Rezabek v. Belgium*, nos. 3989/07 and 38353/07, §§ 57-67, 20 September 2011, with further references, *Baydar v. the Netherlands*, no. 55385/14, § 39, 24 April 2018). Such a refusal may be deemed arbitrary in cases where the applicable rules allow 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 was not duly reasoned (see, among other authorities, *Harisch v. Germany*, no. 50053/16, § 33, 11 April 2019, and *Ullens de Schooten and Rezabek*, cited above, §§ 54-59).

36. The obligation for domestic courts to provide reasons for their judgments and decisions serves to enable the parties to understand the judicial decision that has been given, which is a vital safeguard against arbitrariness. In addition, it serves the purpose of demonstrating to the parties that they have been heard, thereby contributing to a more willing acceptance of the decision on their part (see *Harisch*, cited above, § 33, with further references). Without

requiring a detailed answer to every argument, this obligation presupposes that a party to judicial proceedings can expect a specific and express reply to those submissions which are decisive for the outcome of the proceedings in question (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 185, 6 November 2018).

37. If a referral to the CJEU for a preliminary ruling has been requested by a party and has been refused by a domestic court against whose decisions there is no judicial remedy under national law, the court is required to give reasons for the refusal in the light of the exceptions provided for by the case-law of the CJEU in accordance with the *CILFIT* criteria (see paragraphs 19 and 20 above, and see also *Somorjai v. Hungary*, no. 60934/13, § 57, 28 August 2018, and *Sanofi Pasteur v. France*, no. 25137/16, § 70, 13 February 2020). The court must therefore indicate why it considers the question to be irrelevant, why the EU law provision in question has already been interpreted by the CJEU, or why the correct application of EU law is so obvious as to leave no scope for any reasonable doubt (see *Dhahbi v. Italy*, no. 17120/09, § 31, 8 April 2014).

38. Furthermore, the Court reiterates that the reasons for refusing a request for a referral to the CJEU in the light of the *CILFIT* criteria may be inferred from the reasoning of the judgment of the court concerned (see *Sanofi Pasteur*, cited above, § 71, and *Krikorian v. France* (dec.), no. 6459/07, §§ 97-99, 26 November 2013), from a reference by that court to one of its earlier decisions (see *Gerta Hauser GmbH & Co KG v. Austria* (dec.) [Committee], no. 7626/18, § 13, 6 September 2022; *Vracko v. Austria* (dec.) [Committee], no. 14023/19, § 15, 6 September 2022; and *Klinc v. Austria* (dec.) [Committee], no. 14031/19, § 17, 6 September 2022) or from its endorsement of the reasons given by the lower court, if the lower court has considered the *CILFIT* criteria (see *Harisch*, cited above, § 35, and *Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.), no. 65542/12, § 174, ECHR 2013).

39. Lastly, the Court has previously accepted that a court did not respond to an applicant's request for referral to the CJEU for a preliminary ruling, when that court declared the appeal inadmissible on the grounds that it did not meet the conditions for admissibility, since the preliminary question would not have changed the court's conclusion as to the inadmissibility of the appeal (see *Astikos Kai Paratheristikos Oikodomikos Synetairismos Axiomatikon and Karagiorgos v. Greece* (dec.), nos. 29382/16 and 489/17, § 47, 9 May 2017).

#### (b) Application of the general principles to the present case

40. Turning to the circumstances of the present case, the Court observes that the parties agreed that the Federal Court of Justice was the German court against whose decisions there was no remedy under national law in the proceedings in question (see paragraphs 28 and 32 above). It is also not in

dispute between the parties that the underlying civil proceedings touched upon EU law and that therefore a referral request would, in principle, have been possible.

41. The Court further notes that the applicant asked the Federal Court of Justice to seek a preliminary ruling from the CJEU, formulated four specific questions relating to the interpretation of Directive 2000/78/EC to be referred to the CJEU and argued why a preliminary ruling by the CJEU was necessary for the outcome of the national proceedings (see paragraph 11 above).

42. Given the nature of Article 6 § 1 of the Convention as an individual right that, in the context of requests for preliminary rulings, is intended to ensure the fairness of the proceedings, the Court takes into account whether the applicants have requested the domestic courts to seek a preliminary ruling from the CJEU and have provided express and precise reasons for the alleged necessity of a preliminary ruling (*John v. Germany* (dec.), no. 15073/03, 13 February 2007). The Court recalls in this respect that the right to a reasoned decision serves the general rule enshrined in the Convention which protects the individual from arbitrariness by demonstrating to the parties that they have been heard, receive a response to their submissions and understand a judicial decision (*Baydar*, cited above, § 39, and *Harisch*, cited above, § 33). Taking further into account that there is no right to have a question referred for a preliminary ruling (see paragraph 35 above), a party can, as a safeguard against arbitrariness, only expect a response by a national court in the reasons of a judgement or decision if that party has made submissions for a referral before the competent national court. In the absence of such a request and explicit reasons the Court considers that the fact that a court, without providing reasons, did not refer a question to the CJEU for a preliminary ruling could not be regarded as infringing the fairness of the proceedings pursuant to Article 6 of the Convention (see *Somorjai,* cited above, §§ 60, *John* (dec.), cited above; and *SOL.IN.MUS. S.R.L. and Others v. Italy* (dec.) [Committee], nos. 6656/15 and 7 other applications, § 27, 13 February 2024).

43. The Federal Court of Justice rejected the applicant's complaint against the refusal to grant leave to appeal on points of law using summary wording and dispensed with more detailed reasoning in accordance with German procedural law (see paragraph 12 above). Moreover, the Court observes that the applicant's request for leave to appeal was not rejected for (procedural) inadmissibility reasons (*a contrario*, *Astikos Kai Paratheristikos Oikodomikos Synetairismos Axiomatikon and Karagiorgos*, cited above, § 47). As regards the applicant's request for a preliminary ruling before the CJEU, the Federal Court of Justice stated that "(it) has also examined the question of an obligation to refer the matter to the CJEU for a preliminary ruling under Article 267 § 3 TFEU" (see paragraph 12 above).

44. The Court recognises, as pointed out by the Government (see paragraph 33 above), the strain which high case numbers put on supreme courts and the challenges of balancing the need to speed up proceedings,

concentrate on core functions and provide reasons for decisions. However, the Court reiterates that providing reasons for decisions in reply to parties' submissions enables the parties to understand the judicial decision in question and contributes to a more willing acceptance of that decision. In the context of a complaint against the refusal to grant leave to appeal which include a request for referral to the CJEU, such as in the present case, the Court considers that, under Article 6 of the Convention and in the light of the requirement of procedural fairness, a refusal, while not necessarily needing to be more detailed, must at least indicate the *CILFIT* criteria on which it was based. In that connection the Court also notes that the CJEU has confirmed in a recent judgment that a court or tribunal against whose decisions there is no judicial remedy under national law must set out in its decision refusing an application for leave to appeal on points of law which includes a request for a question to be referred for a preliminary ruling the reasons why such a referral was not made (see paragraph 21 above).

45. While the Federal Court of Justice noted that in the present case it had examined whether it had an obligation to refer the matter to the CJEU for a preliminary ruling (see paragraph 43 above), it did not state the reasons why it considered such a referral to be unnecessary. It did not indicate whether it considered the questions raised by the applicant to be irrelevant, whether the EU law provision in question had already been interpreted by the CJEU, or whether the correct application of EU law was so obvious as to leave no scope for any reasonable doubt (see the case-law quoted in paragraph 37 above).

46. The Government submitted that the Federal Court of Justice had refused the referral request as the questions raised by the applicant were irrelevant to its ruling. The Court cannot, however, discern anything in the reasoning of that court's decision of 9 October 2018 (see paragraph 12 above) to suggest that it was applying that particular *CILFIT* criterion when refusing the request. This is not apparent from the circumstances surrounding the decision, nor did the Federal Court of Justice endorse the reasons of the Court of Appeal, which, in any event, had not considered a referral to CJEU or the *CILFIT* criteria either.

47. The foregoing considerations are sufficient to enable the Court to conclude that the Federal Court of Justice did not give reasons for its refusal to refer questions to the CJEU for a preliminary ruling, despite the applicant's precise request and detailed submissions in this regard. As a consequence the applicant was not enabled to understand why his request for a referral was refused, which undermined the fairness of the proceedings. There has accordingly been a violation of Article 6 § 1 of the Convention.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

48. The applicant further complained under Article 6 § 1 of the Convention about the interpretation of EU law by the national courts and

argued that the Federal Constitutional Court had violated his right to be heard, as it was unclear from its decision, which did not provide reasons, that his submissions had been taken into account. Relying on Article 6 § 1 in conjunction with Article 14 of the Convention, he argued that he had been discriminated against on the ground of age.

49. The Court reiterates that the review of the soundness of the interpretation of EU law is an area that falls outside its jurisdiction (see *Avotiņš v. Latvia* [GC], no. 17502/07, § 100, 23 May 2016; *Somorjai*, cited above, § 54; and *Ullens de Schooten and Rezabek*, cited above, § 66) and that, in the absence of any arbitrariness which would in itself raise an issue under Article 6 § 1, it is not for the Court to examine any errors that might have been committed by the domestic courts in interpreting or applying the EU law in question (see *Avotiņš*, cited above, § 100; *Sanofi Pasteur*, cited above, § 69; *Repcevirág Szövetkezet*, cited above, § 59; and *Ullens de Schooten and Rezabek*, cited above, § 61).

50. The Court further reiterates that for national superior courts – such as the Federal Constitutional Court – it is sufficient, when declining to admit a complaint for adjudication, simply to refer to the legal provisions governing the relevant procedure if the questions raised by the complaint are not of fundamental importance (see, among many other authorities, *Teuschler v. Germany* (dec.), no. 47636/99, 4 October 2001, and *Greenpeace e.V. and Others v. Germany* (dec.), no. 18215/06, 12 May 2009). Article 6 § 1 of the Convention does not require those courts to give more detailed reasoning when simply applying a specific legal provision to dismiss an appeal as having no prospects of success, without further explanation (see *Gorou v. Greece (no. 2)* [GC], no. 12686/03, § 41, 20 March 2009; *Ellersiek v. Germany* (dec.), no. 77151/01, 23 June 2005; and *Burg and Others v. France* (dec.), no. 34763/02, ECHR 2003-II).

51. Lastly, the Court observes that the applicant did not provide any evidence in his application of a difference in treatment by the domestic courts as regards his procedural rights under Article 6 of the Convention. Nor can it find, on the basis of the material in its possession, any indication of differential treatment based on the applicant's age or of any discrimination with regard to his procedural rights.

52. The Court therefore finds, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, that the applicant's complaints under this head do not disclose any appearance of a violation of the rights and freedoms set out in the Convention and its Protocols.

53. Accordingly, these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

55. The applicant claimed 552,000 pounds sterling in respect of pecuniary damage and 20,000 euros (EUR) in respect of non-pecuniary damage.

56. The Government argued that the applicant had not shown a causal link between the alleged violation of Article 6 § 1 of the Convention and the pecuniary damage claimed. They submitted that in any event, no such link existed. Moreover, the amount claimed in respect of non-pecuniary damage was clearly excessive and deviated greatly from the amounts awarded by the Court in comparable cases.

57. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

### B. Costs and expenses

58. The applicant also claimed EUR 147,910.01 for the costs and expenses incurred before the domestic courts and EUR 23,377.55 for those incurred before the Court.

59. The Government submitted that the costs and expenses in the domestic proceedings would have been incurred regardless of the alleged violation of Article 6 § 1 of the Convention. The costs and expenses for the proceedings before the Court were unreasonably high, especially taking into account the fact that the complaint concerned only a single legal question that was not overly complex.

60. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the lack of reasoning for the non-referral of the applicant's case to the CJEU for a preliminary ruling admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 December 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Simeon Petrovski | Lado Chanturia |
| Deputy Registrar | President |