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

FOURTH SECTION

DECISION

Application no. 21853/23
Claudio DE SIMONE
against Germany

The European Court of Human Rights (Fourth Section), sitting on 2 December 2025 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 above application lodged on 25 May 2023,

Having deliberated, decides as follows:

INTRODUCTION

1. The case concerns proceedings for execution of a judgment given by Italian courts in Germany in which the applicant did not request, and the Federal Court of Justice did not make, a referral to the Court of Justice of the European Union ("the CJEU") for a preliminary ruling. The case raises issues under Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

THE FACTS

2. The applicant, Mr Claudio De Simone, is an Italian national who was born in 1951. He was represented before the Court by Mr O. Peter and Ms C. Moreau, lawyers practising in Geneva (Switzerland).

The circumstances of the case

3. The facts of the case, as submitted by the applicant, may be summarised as follows.

4. The applicant is a researcher, who invented a probiotic product containing eight different strains of bacteria. The product was distributed by an Italian private company ("the A company"). Until 2014, the applicant was the CEO of the A company. Before the applicant left the company, the chair of its board of directors had transferred the proprietary rights over the bacterial strains to the applicant free of charge. The strains were stored at the Leibniz Institute DSMZ in Germany.

5. In 2015 the A company brought a claim in Italy against the applicant, seeking the return of the proprietary rights over the strains of bacteria. The strains remained at the Leibniz Institute DSMZ in Germany during the proceedings.

6. In July 2019 the Rome Regional Court found in favour of the A company and ordered that the strains be returned to it. The applicant appealed against that judgment.

7. While the case was still pending on appeal before the Italian courts, the A company instituted execution proceedings in Germany, where the strains were stored, with regard to the judgment of the Rome Regional Court, which had not yet become final. Upon an application by the A company, the Braunschweig District Court ordered the seizure of the strains of bacteria, prohibited the Leibniz Institute DSMZ from returning the strains to the applicant, and transferred the entitlement to their return to the A company.

8. By submissions of 19 and 25 November 2019, the applicant lodged an application with the Braunschweig Regional Court, within the framework of the German execution proceedings, seeking refusal of enforcement under Article 1115 of the German Code of Civil Procedure (see paragraph 14 below).

9. On 9 April 2020 the Regional Court dismissed the applicant's application. The applicant appealed against that decision to the Braunschweig Court of Appeal. On 14 October 2020 the Court of Appeal dismissed the applicant's appeal and upheld the Regional Court's decision.

10. In a subsequent complaint on points of law, the applicant argued that a decision by the Federal Court of Justice was necessary for the development of the law and in the interests of ensuring uniform adjudication, as provided for by Article 574 of the Code of Civil Procedure (see paragraph 15 below). He argued that the Federal Court of Justice had not yet ruled on a particular question regarding the interpretation of *ordre public* in Germany in the context of execution under Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (OJ 2012 L 351, p. 1) (the "Brussels I *bis* Regulation "). The applicant

also formulated the specific question which in his view required an answer by the Federal Court of Justice. Furthermore, he explained why he believed that the interpretation by the Court of Appeal of Article 45 of the Brussels I *bis* Regulation had been incorrect and he complained that the court had failed to take several of his arguments into account.

11. On 19 May 2022 the Federal Court of Justice dismissed the applicant's complaint on points of law as inadmissible. In its six-page decision, the court held that the complaint was inadmissible as the legal matter in question was neither of fundamental significance, nor did the further development of the law or the interest in ensuring uniform adjudication require a decision by the court. It briefly assessed the main arguments set out in the applicant's complaint and dispensed with more detailed reasoning pursuant to Article 577 § 6 of the Code of Civil Procedure (see paragraph 15 below).

12. The applicant lodged a constitutional complaint, complaining that the Federal Court of Justice had not referred the case to the CJEU for a preliminary ruling and that it was not clear from its decision whether it had even considered doing so. The applicant argued that the Federal Court of Justice had misinterpreted the Brussels I *bis* Regulation, had disregarded the jurisdiction of the CJEU and had not explained why it had not referred the case to it for a preliminary ruling.

13. On 16 January 2023 the Federal Constitutional Court refused to admit the constitutional complaint for adjudication, without giving reasons (2 BvR 1331/22).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

14. Applications for the execution of judgments from other EU Member States pursuant to the Brussels I *bis* Regulation are regulated in Article 1115 of the Code of Civil Procedure, which, in so far as relevant, reads as follows:

Article 1115: Refusal of recognition or enforcement

> "(1) The Regional Court shall have exclusive jurisdiction over applications for refusal of recognition or enforcement (Article 45 § 4 and Article 47 § 1 of Regulation (EU) No. 1215/2012).
>
> ...
>
> (5) An immediate complaint (*sofortige Beschwerde*) may be lodged against the decision. The statutory period under the first sentence of Article 569 § 1 shall be one month and shall begin upon service of the decision. A complaint on points of law may be lodged against the decision of the appellate court."

15. The relevant Articles of the Code of Civil Procedure dealing with complaints and complaints on points of law against decisions on applications

for the enforcement of judgments from other EU member States read, in so far as relevant, as follows:

Article 567: Immediate complaint; cross-complaint

"(1) An immediate complaint may be lodged against decisions delivered by the district and regional courts in proceedings before them as courts of first instance if

1. this has been expressly provided for by law; or

2. the decision being challenged did not require a hearing for oral argument and dismissed a petition concerning the proceedings.

..."

Article 574: Complaints on points of law; cross-complaint on points of law

"(1) A complaint on points of law shall be available as a remedy against a court order if:

1. this has been expressly provided for law; or

...

(2) In the cases provided for in paragraph (1), point 1, the complaint on points of law shall be admissible only 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 complaint on points of law.

..."

Article 577: Review of and decision on a complaint on points of law

"(1) The court hearing the complaint on points of law shall review of its own motion whether the complaint on points of law as such is an available remedy and whether or not it has been lodged in keeping with statutory requirements as to form and time and whether reasoning was provided. Should one of those requirements not have been met, the complaint on points of law shall be rejected as inadmissible.

...

(6) The decision on the complaint on points of law shall be delivered by means of a court order (*Beschluss*). Article 564 shall apply *mutatis mutandis*. In all other cases the requirement to provide reasoning may be dispensed with where this would not contribute to clarifying fundamental legal issues, to the further development of the law, or to ensuring uniform adjudication."

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. Refusal to admit a constitutional complaint for adjudication shall not require reasons to be given.

..."

II. EUROPEAN UNION LAW AND PRACTICE

17. 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.

..."

18. 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."

19. 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 *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."

20. 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."

21. As regards the initiation 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. ... It 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 ..."

22. 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 ..."

23. 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."

COMPLAINTS

24. The applicant complained under Article 6 of the Convention that the Federal Court of Justice had not referred his case to the CJEU for a preliminary ruling on the interpretation of the Brussels I *bis* Regulation. He further complained that the Federal Constitutional Court had not given reasons for its decision not to admit his constitutional complaint for adjudication.

THE LAW

25. The applicant relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

A. Complaint concerning the lack of reasoning for the non-referral of the case to the CJEU for a preliminary ruling

1. Preliminary remarks

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 27 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.

2. General principles

27. 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).

28. 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).

29. If such 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 domestic 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 18 and 19 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).

30. 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).

3. Application of the general principles to the present case

31. Turning to the circumstances of the present case, the Court observes that the applicant submitted 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 within the meaning of Article 267 TFEU (see paragraph 17 above). The Court sees no reason to hold otherwise.

32. The Court further notes that the Federal Court of Justice declared the complaint on points of law inadmissible. As pointed out above (see the case-law cited in paragraph 30 above), the Court has accepted the absence of any reasoning by national superior courts where complaints are declared inadmissible for (procedural) inadmissibility reasons. However, in its six-page decision the Federal Court of Justice devoted three pages to an assessment of the main arguments made by the applicant and summarily considered the merits of the case (see paragraph 11 above). The Court therefore concludes that the complaint on points of law was refused, in substance, for reasons closely related to the merits of the complaint. In such circumstances, there seems to have been no grounds that prevented the Federal Court of Justice from referring the matter to the CJEU for a preliminary ruling, if it found it appropriate.

33. 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 proceedings, the Court takes into account whether the applicants have requested the domestic courts to seek a preliminary ruling from the CJEU and had 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 under the Convention (see paragraph 27 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 (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). For an explicit request to refer a question to the CJEU for a preliminary ruling it is not sufficient for an applicant to have broadly challenged the alignment of the domestic provisions with EU law or the interpretation of EU law by the domestic courts (compare *SOL.IN.MUS. S.R.L. and Others*, cited above).

34. Although the applicant in the present case formulated a specific question in his complaint on points of law to the Federal Court of Justice, that question concerned the interpretation of German and EU law by the Federal Court of Justice and not the CJEU (see paragraph 10 above). He argued that the matter required a decision by the Federal Court of Justice and did not request or even mention a referral to the CJEU. Moreover, while he broadly challenged the interpretation of Article 45 of the Brussels I *bis* Regulation by the Court of Appeal, his complaint did not make any arguments as to why a preliminary ruling was necessary.

35. Accordingly, the applicant neither requested a referral nor provided any arguments in support of such a request. Therefore, Article 6 § 1 of the Convention did not require the applicant to be provided with reasons concerning an issue he had not raised in the proceedings, namely a referral to the CJEU for a preliminary ruling.

36. Accordingly, this complaint is manifestly ill-founded and must be rejected under Article 35 §§ 3 and 4 of the Convention.

B. Complaint concerning the lack of reasoning by the Federal Constitutional Court

37. The Court reiterates that for national superior courts – such as the Federal Constitutional Court – it is sufficient, when declining to admit a complaint, 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).

38. The Court notes that section 93d(1) of the Federal Constitutional Court Act exempts the Federal Constitutional Court from the requirement to provide reasons for its decision not to admit a constitutional complaint for adjudication (see paragraph 16 above). The Court considers that that section is interlinked with the admissibility of a constitutional complaint as a whole and the mere fact that the Federal Constitutional Court did not specifically cite section 93d(1) does not therefore, as such, violate Article 6 § 1 of the Convention (compare *Greenpeace e.V. and Others*, cited above).

39. It follows that this complaint must likewise be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 16 December 2025.

Simeon Petrovski Deputy Registrar	Lado Chanturia President