THE RIGHT TO DEFENSE IN THE CONTEXT OF PENAL ENFORCEMENT: INTERNATIONAL AND EUROPEAN HUMAN RIGHTS STANDARDS

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Abstract

This study analyses the evolution and current standards of the right to defense within the framework of penal enforcement, as developed under international and European human rights law. It examines how the guarantees of legal assistance, access to counsel, and fair treatment of persons deprived of liberty have been shaped by three major legal systems: the United Nations, the Council of Europe – particularly through the jurisprudence of the European Court of Human Rights – and the European Union. The paper identifies the principal legal instruments and case law defining defense rights during imprisonment, including the UNCAT, the Nelson Mandela Rules, the ECHR, and the EU directives on procedural safeguards and legal aid. Special attention is given to the interaction between the ECtHR and the CJEU in harmonizing standards of fair trial and legal assistance. The analysis concludes that the right to defense in penal enforcement represents an evolving and integral component of the rule of law, requiring constant judicial oversight and coherent implementation across international and regional frameworks.

Keywords: *right to defense, prisoners' rights, penal enforcement, legal aid, fair trial, European Court of Human Rights, Court of Justice of the European Union, human rights standards*

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1. INTRODUCTION

Human rights are often described as "the laws of the weakest," reflecting their essential function of protecting the individual against the potential overreach of state power (Valesco, 2020, p. 72). Their origins can be traced back to the foundational documents of the Anglo-Saxon legal tradition – the Magna Charta Libertatum (1215), the Habeas Corpus Act (1679), and the Bill of Rights (1689) – while the philosophical underpinnings were provided by Enlightenment thinkers such as Beccaria, Grotius, Kant, Montesquieu, Pufendorf, and Rousseau (Trechsel, 2014, p. 99). Over time, the evolution of international human rights treaties and domestic constitutional law has progressively enhanced the protection of individual rights and exerted a growing influence on criminal justice systems worldwide (van Kempen, 2014, p. XI). Within this broader framework, the rights of persons deprived of liberty have been codified and strengthened through a variety of international instruments, including the United Nations Nelson Mandela Rules, the European Prison Rules, and the recommendations of the Committee against Torture (CAT).

The right to defense represents one of the most fundamental guarantees of this human rights architecture. While its relevance during investigation and trial has been extensively discussed, its operation within the context of penal enforcement has received comparatively less scholarly attention. Yet, imprisonment remains a crucial phase of the criminal process, during which the legal position of the individual continues to be subject to state authority. Ensuring access to legal assistance, communication with counsel, and procedural remedies during imprisonment is essential to prevent abuse of power and safeguard human dignity.

The present study therefore seeks to examine how the human rights-based conception of defense and thus to the rights of prisoners has evolved and strengthened within three major legal regimes: the United Nations, the Council of Europe, and the European Union. The research aims to identify the normative foundations, institutional mechanisms, and judicial interpretations that collectively define the scope of the right to defense during penal enforcement. By employing a doctrinal and comparative legal approach, supported by the analysis of international case law and secondary literature, the paper provides a structured account of the existing standards and evaluates their practical implementation. The article is organized into three main sections: the first addresses the universal framework of the United Nations, the second explores the regional framework of the Council of Europe with particular focus on the European Court of Human Rights, and the third considers the contributions of the European Union's legal order. The conclusion summarizes the principal findings and offers reflections on the future development of the right to defense as a key element of human rights protection in the field of penal enforcement.

2. THE RIGHT TO DEFENSE UNDER THE UNITED NATIONS FRAMEWORK

2.1. Universal foundations of human rights protection

Human rights embody the universal and indivisible principles of human existence and coexistence upon which the United Nations' objectives of peace, development, and justice are founded (Annan, 2002). The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly on 10 December 1948 without a single vote against, proclaims that every human being is entitled to life, liberty, and personal security and shall not be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. As the first universally binding human rights instrument, the UDHR remains the cornerstone of global protection (Oraá, 2009, p. 164).

Under UN auspices, a broad set of rights has been developed to shield individuals from abuses of state authority. Among these, the right to a fair trial ensures equality between the defense and the prosecution, while the prohibition of torture and inhuman treatment applies throughout both criminal proceedings and the enforcement of sentences. Equally important are the rights to an effective remedy and to compensation for violations of fundamental rights. The UN framework further recognizes the immunity and independence of lawyers and secures for everyone the right to legal assistance in criminal proceedings irrespective of financial capacity, thus establishing the principle of state-funded defense counsel. These guarantees are reinforced by the protection of attorney-client privilege, which serves as a foundation for judicial independence.

2.2. United Nations standards on the treatment of prisoners

The Standard Minimum Rules for the Treatment of Prisoners were first adopted in 1955 during the inaugural UN Congress on the Prevention of Crime and the Treatment of Offenders (Juhász, 2006, p. 44). They were later revised and formally endorsed by the UN General Assembly in 2015 as the Nelson Mandela Rules, commemorating the former prisoner and human rights advocate Nelson Mandela, who spent 27 years in detention under number 46664 (Penal Reform International & Human Rights Centre, University of Essex, 2017, p. 5). The revised rules represent the first official update of the UN minimum standard for prison management and human rights protection. Rule 88(2) calls on states to safeguard the civil, social security, and social rights of prisoners that are not affected by their sentence, while Rules 41–57 guarantee the right to remedies and legal assistance, including access to counsel, confidential communication, and judicial review of disciplinary sanctions.

The primary guardians of rules concerning incarcerated persons are international human rights treaties and the international organizations associated with them. Several examples may be cited in this regard. In its

Report on the Use of Pretrial Detention in the Americas, the Commission concluded that "the excessive and non-exceptional use of pretrial detention is one of the most serious and widespread problems that the OAS member States face when it comes to respecting and ensuring the rights of persons deprived of liberty" (IACHR, 2017, p. 20). Similarly, in *Vélez Loor v. Panama*, the Commission requested the Court "to order the State to ensure that Panamanian prisons meet minimum standards that are compatible with humane treatment and a life with dignity for those deprived of their liberty" (2010, § 273).

The activities of these organizations, both individually and cumulatively, strengthen the rights of incarcerated persons and the rights of defense. Such reinforcement is particularly necessary because domestic courts are not always capable of preventing states from weakening human rights protections. The development of human rights is not a linear or one-directional process; in some states, regressions can also be observed. This phenomenon is evident even in the United States, where in *Furman v. Georgia* the Supreme Court imposed a temporary moratorium on the death penalty. Subsequently, following changes in death penalty regulations, the Court itself declared the procedure for imposing capital punishment constitutionally acceptable in *Gregg v. Georgia*.

In Germany, an attempt was made to address the same issue through the so-called eternity clause, whereby the unamendable protection of human dignity constitutes the strongest barrier to the reintroduction of the death penalty, as it is considered incompatible with human dignity. By contrast, in Tanzania, within the theoretical legal debate surrounding the case of *Mbushuu alias Dominic Mnyaroje & Kalai Sangula v. The Republic* – in which the death penalty was ultimately not declared unconstitutional – the conditions of detention of incarcerated persons raised the question of whether the execution of the death penalty could be regarded as a form of "appropriate reward" for the convicted individual (Gaitan & Kuschnik, 2009, pp. 470–471, 476).

2.3. Core international covenants and the prohibition of torture

The International Covenant on Civil and Political Rights (ICCPR, 1966) codifies many of these safeguards. Article 14 enshrines the right to a fair trial as a fundamental legal principle, forming the normative basis of the right to defense. Under Article 2(3), state parties must ensure that any person whose rights are violated has access to an effective remedy determined by competent administrative or judicial authorities. Article 7 expressly prohibits torture and cruel, inhuman, or degrading treatment or punishment, establishing a binding standard that defines the lawful limits of penal enforcement. Article 9(5) provides for the right to compensation not only in cases of unlawful detention but also for damage caused by the unlawful execution of a lawful sentence.

The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) complements these guarantees by recognizing rights essential to the

human dignity of persons in detention, including the right to the highest attainable standard of physical and mental health, access to education, and participation in cultural life. State parties have undertaken to restrict these rights only to the extent compatible with their nature and with Article 4 of the Covenant. The enforcement of sentences must therefore not nullify the enjoyment of rights under the ICESCR; it is the legislature's duty to define proportionate limitations, and the prison administration's responsibility to ensure their effective application.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT, 1984) elaborates the definition of torture and explicitly excludes any exceptional circumstances – such as war or public emergency – as justification for its use. Articles 13 and 14 guarantee victims the right to complain, to legal protection, and to compensation. To supervise implementation, the Committee against Torture (CAT) was established, and the Optional Protocol to the Convention against Torture (OPCAT, 2002) created the Subcommittee on Prevention of Torture, composed of independent experts authorized to conduct unannounced visits to places of detention.

2.4. Lawyers, legal aid, and procedural guarantees

The Basic Principles on the Role of Lawyers, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders (Havana, 1990), underscore the essential role of lawyers in ensuring justice. They affirm that all persons have the right to the assistance of counsel at all stages of criminal proceedings and that governments must provide adequate funding for legal representation of those unable to afford it. If justice so requires, the state must appoint competent defense lawyers free of charge. Detainees must be able to consult their lawyers without delay – at the latest within 48 hours of detention – and in full confidentiality, free from surveillance or censorship (United Nations, 1991, p. 120). Lawyers are entitled to carry out their professional duties without intimidation, interference, or sanctions, and enjoy civil and criminal immunity for statements made in good faith during professional duties (United Nations, 1991, p. 122).

In 2012, the UN General Assembly adopted the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (A/Res/67/187), the first international instrument devoted exclusively to the right to legal aid. Building on the 1990 Principles on the Role of Lawyers, it defines legal aid as an essential component of a fair, humane, and efficient criminal justice system (UNODC, 2012, pp. 2, 8–11). The first principle establishes the right to legal aid; the second affirms state responsibility to ensure access; and the third specifies that free legal assistance must be provided when justified by the urgency, complexity, or gravity of the case (Willems, 2014, p. 196). Guideline 6 requires states to guarantee access to legal aid for all detained persons and for children deprived of liberty, including in matters

concerning the conditions of detention, disciplinary procedures, pardons, and parole requests. Although these principles are not legally binding, they represent a significant political acknowledgment of access to justice as a universal right (Willems, 2014, pp. 195–196).

2.5. Remedies and implementation

The Nelson Mandela Rules further detail the remedies available to prisoners. Rules 41–57 establish the right to submit complaints to prison authorities, oversight bodies, or judicial institutions, and to receive timely and reasoned responses. The Essex Group's interpretative commentary emphasizes that access to legal advice must be ensured in all detention facilities and in languages understood by prisoners, including in accessible formats such as Braille (Penal Reform International & Human Rights Centre, University of Essex, 2017, pp. 50–52). Prisons must provide confidential spaces for consultations and ensure that no prisoner is required to disclose the intention to meet with legal counsel, as this could undermine the effectiveness of remedies.

2.6. Synthesis

Together, these instruments form a coherent framework that extends the right to defense beyond the courtroom into the realm of penal enforcement. They impose upon states the dual obligation to respect and to facilitate legal assistance for all persons deprived of liberty. Although much of this framework operates through soft law, its cumulative effect has been to articulate a global consensus: the right to defense is integral to human dignity and the rule of law.

3. THE RIGHT TO DEFENSE UNDER THE COUNCIL OF EUROPE FRAMEWORK

3.1. Normative foundations and scope

Within the Council of Europe, the European Convention on Human Rights (ECHR) provides the primary normative basis for safeguarding defense rights throughout criminal proceedings and during penal enforcement. Article 3 prohibits torture and inhuman or degrading treatment; Article 5 enshrines the right to liberty and security and requires prompt and effective judicial review of detention; Article 6 guarantees the right to a fair trial and to defense; and Article 13 secures the right to an effective remedy, including against violations by public officials (Nagy, 1999, p. 68; Rozsnyai & Koósné, 2021, para. 169). The European Court of Human Rights (ECtHR) in Strasbourg not only adjudicates individual cases but also develops the Convention's guarantees through authoritative interpretation, thereby shaping common European standards (*Ireland v. the United Kingdom*, 1978, §154; *Jeronovičs v. Latvia*, 2016, §109; Garajszki, 2022, p. 423).

3.2. Access to counsel and legal aid

Early case law underscored that imprisonment does not entail a loss of Convention rights (*Ilse Koch v. FRG*; Balogh, 2002, p. 78). In *Engel and Others v. the Netherlands*, the Court clarified that all forms of deprivation of liberty fall under Article 5 irrespective of procedural labels (Bán, 1991, pp. 42–43). The right to self-representation is not absolute; states retain a margin of appreciation to require representation when the interests of justice so demand, as confirmed in *Philis v. Greece* (1992, §59) and *Correia de Matos v. Portugal* (2001, §66). Conversely, when an accused person is unable to retain a lawyer, free legal assistance may be required depending on offense seriousness and potential sanction (ECHR, 2025, p. 92). The Court held in *Benham v. the United Kingdom* (1996, §§60–61) that the risk of imprisonment triggers a duty to provide legal aid; *Quaranta v. Switzerland* (1991, §33) extended this to cases where custody is the only thing at stake; *Zdravko Stanev v. Bulgaria* (2012, §38) recognized necessity even absent an executable sentence; and *Twalib v. Greece* (1998, §53) found a violation given cassation complexity, mandatory representation, and linguistic disadvantages. Echoing *Artico v. Italy* (1980, §33), the Court emphasizes that Convention rights must be "practical and effective," not "theoretical or illusory," and in *Beuze v. Belgium* (2018, §136) it assessed the overall quality of assistance, including preparation, evidence gathering, interview support, and monitoring of detention conditions.

3.3. Prisoners' access to courts and confidential communications

In *Golder v. the United Kingdom* (1975, §35), the ECtHR derived a right of access to a court from Article 6(1), a principle applied to prisoners seeking legal remedies. Interference with access to a lawyer simultaneously undermines access to court, as held in *Silver and Others v. the United Kingdom* (1983, §§81–82) (Kabódi, 1994, pp. 4, 8–9). The Court has strictly protected confidential lawyer-client correspondence: *Schönenberger & Durmaz v. Switzerland* (1988, §28) and *Campbell & Fell v. the United Kingdom* (1984, §110) held that letters may be opened only on compelling grounds incapable of detection by other means (Balogh, 2002, p. 84).

3.4. Preventive standards of the CPT

Beyond adjudication, the Council of Europe established the European Committee for the Prevention of Torture (CPT) under the European Convention for the Prevention of Torture. Through visits and reports, the CPT advances preventive standards, highlighting from the outset of custody three core safeguards: notification of a third party, access to a lawyer, and medical examination (Koósné et al., 2017, p. 253; González, 2009, p. 769). In its 21st General Report, the CPT urged that access to a lawyer must be available from the very outset of deprivation of liberty, even in legally ambiguous situations, given the heightened risk of ill-treatment; personal, confidential meetings are

indispensable to assess physical and mental state (CPT, 2011, pp. 17–19). The CPT also recognizes that indigence must not bar access to a lawyer, a view echoed in the Essex Group's commentary (Penal Reform International & Human Rights Centre, University of Essex, 2017, pp. 50–51).

3.5. European Prison Rules

The European Prison Rules (EPR), first adopted in 1987 and comprehensively revised in Rec(2006)2, synthesize ECtHR jurisprudence and CPT practice (Juhász, 2006, p. 44). The revised Rules emphasize dignity, minimal necessary restrictions, normalization, reintegration, staff professionalism, and external oversight (Juhász, 2006, pp. 45–46). Substantively, the EPR guarantee access to legal advice in criminal and civil matters, confidential consultations subject to only exceptional, reasoned limitations, and information about eligibility for legal aid (Rule 23.3) (Juhász, 2006, p. 48). The complaints regime prohibits reprisals (Rule 70.4) yet limits third-party complaints absent prisoner consent (Rule 70.6) and allows legal assistance in complaint procedures only where "the interests of justice so require" (Rule 70.7), a formulation that risks diluting effective access to defense. For remand detainees, Part VIII mandates information on the right to legal advice and conditions enabling effective defense, including private meetings with counsel (Rules 98.1–98.2) (Juhász, 2006, p. 57).

3.6. Derogations and national security

Counter-terrorism has tested access-to-lawyer guarantees. While Article 15 ECHR permits derogations in emergencies, they must remain strictly required by the exigencies of the situation (Cassel, 2008, pp. 827–828). The Court invalidated four and a half days of detention without judicial control in *Brogan and Others v. the United Kingdom* (1988, §62), accepted a derogation in *Brannigan and McBride v. the United Kingdom* (1993, §66) where consultation with counsel was allowed within 48 hours, and condemned 14 days without judicial control in *Aksoy v. Turkey* (1996, §78). While *Schiesser v. Switzerland* (1979, §36) did not require counsel's presence at a hearing, *Lebedev v. Russia* (2007, §91) found that excluding counsel impaired defense rights.

3.7. Protection of lawyers and the integrity of proceedings

The ECtHR scrutinizes state pressure on lawyers as a distinct Convention concern. In *Khodorkovskiy & Lebedev v. Russia* (2013, §§924–933), authorities' obstruction – hindering contacts, denying visas, financial probes, disqualification attempts – violated Article 34. *Kurt v. Turkey* (1998, §§160, 164) barred threats of criminal proceedings against applicants' representatives; *McShane v. the United Kingdom* (2002, §§147–151) warned that sanctioning lawyers chills individual petition. *Şarli v. Turkey* (2001, §§85–86) found a violation where criminal proceedings were brought against a lawyer for

preparing a Strasbourg petition. *Leotsakos v. Greece* (2018, §38), relying on *Elçi and Others v. Turkey* (2003, §669), reaffirmed the pivotal role of lawyers for the rule of law. The Court closely examines searches and arrests of lawyers, protecting professional premises under Article 8, as in *Niemietz v. Germany* (1992, §37). Free and unimpeded lawyer-client communication is essential to Article 34; any direct or indirect pressure violates the Convention (*Fedorova v. Russia*, 2006, §§45–52). In pre-trial detention review, *Černák v. Slovakia* (2013, §78) required an adversarial procedure and equality of arms enabling meaningful assistance by counsel.

3.8. Equality of arms and access to evidence

Fairness requires an adversarial process and genuine equality of arms: both parties must know and comment on the evidence (*Rowe and Davis v. the United Kingdom,* 2014, §70; *Brandstetter v. Austria*, 1991, §§66–67; *Edwards v. the United Kingdom*, 1992, §89). Defense access to the case file and relevant documents is essential (*Beraru v. Romania*, 2014, §70; *Öcalan v. Turkey*, 2005, §140). Withholding evidence can breach equality of arms (*Kuopila v. Finland,* 2000, §38), though the Court has accepted requirements for concrete justification of access (*Matanović v. Croatia*, 2017, §177). Restrictions may be permissible to protect national security or witnesses, but only if strictly necessary and offset by counterbalancing procedural safeguards (*Leas v. Estonia,* 2012, §§78, 80–81; *Van Mechelen and Others v. the Netherlands*, 1997, §§54, 58). Fairness is assessed in light of the proceedings as a whole, including how evidence was obtained (*Bykov v. Russia*, 2009, §89). Where earlier defects are remedied later, no violation may be found (Nagy, 2011, p. 33).

3.9. Supervision of execution and systemic impact

Since the 1990s, the Court has increasingly used public international law sources to inform the Convention's interpretation (Seatzu & Fanni, 2015, p. 32). The Committee of Ministers oversees execution of judgments, verifying payment of just satisfaction and adoption of individual and general measures; cases remain under supervision until full compliance (FRA, 2010, p. 53). This mechanism fosters convergence in European human rights protection and steers the long-term direction of legal development across member states (Bán, 1999, p. 8). The Council of Europe framework thus provides the most comprehensive regional articulation of the right to defense, combining judicial oversight with preventive monitoring mechanisms. Building upon these achievements, the European Union has progressively integrated comparable safeguards into its *acquis*, translating human rights standards into concrete procedural norms. The next section explores this evolution within the EU's legal system.

4. THE RIGHT TO DEFENSE WITHIN THE EUROPEAN UNION'S LEGAL ORDER

4.1. Integration of defense rights in EU law

Building upon the human rights developments within the United Nations and the Council of Europe, the European Union (EU) has gradually incorporated key defense guarantees into its own legal framework. These include the right to defense, the right to legal counsel and assistance, access to free legal aid, confidential lawyer-client communication, the right to effective judicial protection, fair trial, equality of arms, and the right to be present at procedural acts.

The institutional foundations of the EU emerged parallel to the international human rights system – through the European Coal and Steel Community, EURATOM, and the European Economic Community (Békés, 2010, p. 152). Criminal justice cooperation was initially outside the *acquis communautaire*, but over time became integral to it. Although Member States were reluctant to transfer criminal jurisdiction, Community law began to influence national systems (Vókó, 2006, p. 60). Early case law – such as *Commission v. France* (1980), concerning advertising restrictions breaching Article 30 EEC (Szüts, 2004, p. 534), and *Commission v. Greece* (1989), which affirmed the duty to protect Community interests (Karsai, 2002, p. 81) – illustrated this growing impact. Yet Guerrino Casati (1981) confirmed that the founding treaties did not themselves regulate substantive criminal law (Holé, 2003, p. 72).

The *Treaty of Maastricht* introduced the obligation to combat fraud affecting the EU's financial interests with the same vigor as national offenses, while the *Treaty of Amsterdam* reinforced the human rights dimension of EU law by enabling a determination of persistent violations of the Union's fundamental values (Lakatos, 2002, p. 51). The 2004 Proposal for a Framework Decision on procedural rights – though not adopted – provided a conceptual foundation for subsequent directives, particularly concerning access to counsel, the right to communicate with a lawyer without supervision, and procedural safeguards for suspects (Blaskó & Budaházi, 2019, pp. 151–152). The harmonization of defense rights advanced slowly but accelerated after the *Treaty of Lisbon*, which placed the principle of mutual recognition at the core of judicial cooperation in criminal matters (Farkas, 2012, p. 156). Despite these advances, persistent divergences among national systems and lack of mutual trust still hinder uniform application (Bárd, 2021, p. 45).

4.2. The Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union (2016/C 202/02) did not create new rights but consolidated those already guaranteed by international conventions and national constitutions (Weller, 2001, p. 34). The

Charter explicitly extends to issues of criminal justice and detention under the protection of the EU Agency for Fundamental Rights (FRA). Article 47 guarantees the right to a fair hearing, and Article 48(2) enshrines respect for the rights of the defense. According to Article 52, these rights may only be restricted by law, in compliance with the essence of the right, and when proportionate and necessary to protect public interest or the rights of others.

The Court of Justice of the European Union (CJEU) has consistently held that Article 47 also encompasses the principles of equality of arms and procedural fairness, as affirmed in *Direcția Generală Regională a Finanțelor Publice Brașov v. Toma* (2016, §47) and *Sánchez Morcillo & Abril García v. Banco Bilbao Vizcaya Argentaria* (2014, §49). However, the right to self-representation is not absolute, paralleling ECtHR jurisprudence (*Stefano Melloni v. Ministerio Fiscal*, 2013, §§49–52).

4.3. Institutional initiatives and legislative framework

EU institutions primarily rely on political instruments to promote compliance with Council of Europe standards. The European Parliament's Declaration of 14 February 2011 (European Commission, 2011) called upon the European Commission to develop minimum rules on detention and to establish independent national monitoring mechanisms in line with the Optional Protocol to the Convention against Torture (OPCAT) of 2002.

The Council Roadmap of 30 November 2009 (Council of the European Union, 2009) on strengthening procedural rights of suspects and accused persons identified early access to legal advice and effective legal aid as preconditions for a fair trial. This roadmap served as the basis for a series of directives establishing a coherent framework for defense rights within the EU.

4.4. The Directive 2012/13/EU on the right to information in criminal proceedings

Directive 2012/13/EU mandates early and effective access to a lawyer, encompassing the right to confidential consultation and, where appropriate, the right to free legal representation. It applies both to criminal proceedings and to procedures under the European Arrest Warrant (EAW). The directive ensures that persons deprived of liberty can meet and consult with a lawyer without undue delay and before questioning. Moreover, suspects have the right to appoint a lawyer in the issuing Member State who may cooperate with the lawyer in the executing state to safeguard the suspect's rights effectively.

The directive explicitly requires that the conditions of deprivation of liberty comply with the ECHR, the EU Charter, and ECtHR case law. Confidentiality of lawyer-client communications is a core guarantee of the right to defense, from which no derogation is permissible. Member States may introduce

technical controls solely for security purposes and only if these do not enable access to the content of communications. National security operations lawfully authorized under EU treaties remain unaffected.

The directive further stipulates that access to legal counsel must be granted at the earliest possible stage: before interrogation, during investigative acts, immediately following deprivation of liberty, and before court appearances. The right includes private communication, the lawyer's presence during questioning, and participation in identification procedures, confrontations, or reconstructions (Blaskó & Budaházi, 2019, p. 155). Member States must guarantee the practical effectiveness of these rights unless the suspect voluntarily waives them.

4.5. Special protection for minors and vulnerable persons

Directive 2016/800/EU provides enhanced safeguards for children, mandating legal assistance during both detention proceedings and the entire period of custody. Authorities must postpone interviews or evidence-taking if no lawyer is present. The CPT has equally stressed the necessity of mandatory representation for juveniles (CPT, 2015, p. 2).

4.6. Directive 2016/1919/EU on legal aid

Directive 2016/1919/EU codifies the right to legal aid to ensure that suspects and detainees can effectively exercise the right to defense, particularly during investigative and evidentiary stages (Kanev, 2018, p. 7). It reinforces the primacy of justice over financial considerations, guaranteeing that access to defense does not depend on material means. However, its dual requirement – that both indigence and the "interests of justice" be met – has been criticized as discriminatory, since wealthier defendants may always secure counsel, whereas indigent defendants qualify only when public interests so demand (Kanev, 2018, pp. 7, 22). Article 3(4) allows Member States to assess either financial need, merits, or both; Article 4(4) identifies situations where legal aid must be provided, such as pretrial detention hearings or ongoing detention. Nonetheless, the directive excludes minor offenses that do not entail deprivation of liberty.

4.7. Interaction between the CJEU and the ECtHR

The relationship between the CJEU and the ECtHR remains complex, as the EU has not acceded to the ECHR, despite prior institutional support (Kovács, 2001, p. 94). Over time, the CJEU has recognized the Convention's relevance: in Internationale Handelsgesellschaft (1970), it acknowledged fundamental rights as general principles of EU law; in Nold (1974), it referred to international conventions; and in Rutili (1975), it explicitly invoked the ECHR (Szüts, 2004, p. 540). More recently, *Åkerberg Fransson* (2013) and *Melloni* (2013) confirmed that the ECHR functions as a primary source of EU

fundamental rights protection. The Court emphasized that while the Convention provides a higher standard of protection, national constitutional safeguards cannot undermine the primacy or uniformity of EU law, particularly regarding fair trial and defense rights (Kaiafa-Gbandi, 2019, p. 58).

5. CONCLUSION

Human rights are founded on the universal principles of human dignity, liberty, and equality, regardless of an individual's origin, social status, or belief. The United Nations played a pivotal role in codifying these rights through the Universal Declaration of Human Rights (UDHR), which proclaimed the rights to life, liberty, and personal security, and prohibited torture and inhuman treatment. Subsequent UN treaties – most notably the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) – established detailed procedural and substantive guarantees, including the right to a fair trial, access to remedies, and legal assistance. The Convention against Torture (UNCAT) and the Nelson Mandela Rules further refined the standards of detention, emphasizing unrestricted access to legal counsel and independent oversight of prison conditions.

Within the Council of Europe, the European Convention on Human Rights (ECHR) became the cornerstone of the continent's human rights protection. The jurisprudence of the European Court of Human Rights (ECtHR) – in cases such as *Engel and Others v. the Netherlands*, *Benham v. the United Kingdom*, *Artico v. Italy*, and *Beuze v. Belgium* – has been instrumental in defining the scope and substance of fair trial and defense rights. The Court has consistently held that the right to legal assistance must be not merely theoretical or illusory but practical and effective, particularly when a custodial sentence is at stake. In *Edwards v. the United Kingdom*, the Court affirmed that fairness requires full defense access to evidence, thus ensuring equality of arms as a procedural cornerstone.

In the European Union, criminal law initially lay outside the competences of the Community. Over time, however, the Union's legal order increasingly shaped national systems. Following *Commission v. Greece* and the *Treaty of Maastricht*, the protection of the EU's financial interests acquired a quasi-criminal dimension. The *Treaty of Lisbon* elevated mutual recognition as the foundation of judicial cooperation in criminal matters, while the Charter of Fundamental Rights enshrined the right to a fair trial (Article 47) and the rights of the defense (Article 48). Subsequent directives strengthened these principles in concrete procedural contexts: Directive 2013/48/EU ensured suspects' and accused persons' rights to access a lawyer and to communicate confidentially; Directive 2016/800/EU established mandatory legal representation for children; and Directive 2016/1919/EU set the conditions for legal aid. Yet, by coupling eligibility for free legal assistance to both indigence and the "interests

of justice," the latter directive risks disadvantaging poorer defendants whose effective access to defense remains conditional.

The relationship between the ECtHR and the Court of Justice of the European Union (CJEU) remains complex. Although the EU has not acceded to the ECHR, the CJEU – through landmark rulings such as *Internationale Handelsgesellschaft* (1970), *Nold* (1974), *Rutili* (1975), *Åkerberg Fransson* (2013), and *Melloni* (2013) – has acknowledged the Convention as part of the Union's general principles of law. The Court has also recognized that national constitutional safeguards cannot override EU law where they obstruct the realization of fundamental Union principles, particularly the right to a fair trial and the right of defense.

Taken together, the evolution of defense rights from the UN through the Council of Europe to the EU demonstrates a progressive constitutionalization of human rights in the field of criminal justice. These overlapping frameworks, while diverse in legal force, converge on a shared commitment: that justice must remain accessible, impartial, and humane – even for those whose liberty has been curtailed.

References

Monographs and academic literature

Annan, K. A. (2002). Foreword. In Office of the United Nations High Commissioner for Human Rights (Ed.), *Human rights: A compilation of international instruments. Volume I (First part): Universal instruments* (p. XIII). United Nations. https://www.ohchr.org/sites/default/files/Documents/Publications/Compilation1en.pdf *(accessed 31 October 2025)*

Balogh, A. J. (2002). A strasbourgi bíróság gyakorlata a büntetés-végrehajtási ügyekben [The case law of the Strasbourg Court in penal enforcement matters]. *Börtönügyi Szemle* [Prison Review]*, 21*(2), 77–92. https://epa.oszk.hu/02700/02705/00050/pdf/EPA02705_bortonugyi_szemle_2002_2_077-092.pdf *(accessed 31 October 2025)*

Bán, T. (1991). A diszkrimináció tilalma az Európai Emberi Jogi Egyezményben [Prohibition of discrimination in the European Convention on Human Rights]. *Acta Humana, 2*(5), 37–54.

Bán, T. (1999). Az Európa Tanács ötven éve: Tagságunk hatásai a magyar jogfejlődésre [Fifty years of the Council of Europe: The impact of our membership on the development of Hungarian law]. *Acta Humana, 10*(35–36), 8–28.

Bárd, K. (2021). *Az áldozatok méltósága és a vádlottak jogai: Összehasonlító jogi tanulmány* [The dignity of victims and the rights of defendants: A comparative legal study]. Budapest: HVG-ORAC.

Békés, Á. (2010). *Az európai büntetőjog – luxemburgi és strasbourgi büntető ítélkezés* [European criminal law – criminal judgments in Luxembourg and Strasbourg] [Doctoral dissertation]. Pázmány Péter Catholic University. https://disszertacio.ppke.hu/id/eprint/381/1/JAK_DD_2010_bekes.pdf *(accessed 31 October 2025)*

Blaskó, B., & Budaházi, Á. (2019). *A nemzetközi bűnügyi együttműködés joga* [The law of international cooperation in criminal matters]. Budapest: Dialóg Campus. https://tudasportal.uni-nke.hu/xmlui/bitstream/handle/20.500.12944/13041/web_PDF_Nemzetkozi_bunugyi_egyuttmukodes_joga.pdf *(accessed 31 October 2025)*

Cassel, D. (2008). Pretrial and preventive detention of suspected terrorists: Options and constraints under international law. *The Journal of Criminal Law and Criminology, 98*(3), 811–852. https://www.jstor.org/stable/40042788 *(accessed 31 October 2025)*

Farkas, Á. (2012). Az európai büntetőjog fejlődésének irányai a Lisszaboni Szerződés után [Trends in the development of European criminal law after the Treaty of Lisbon]. In Juhász, Zs., Nagy, F., & Fantoly, Zs. (Eds.), *Sapienti sat: Ünnepi kötet Dr. Cséka Ervin professzor 90. születésnapjára* [Sapienti sat: Anniversary volume for Professor Ervin Cséka's 90th birthday] (pp. 139–158). Szeged: SZTE.

FRA – European Union Agency for Fundamental Rights. (2010). *Az igazságszolgáltatáshoz való hozzáférés Európában: A kihívások és lehetőségek áttekintése* [Access to justice in Europe: An overview of challenges and opportunities]. Bécs. https://fra.europa.eu/sites/default/files/fra_2010_01940000_hu.pdf *(accessed 31 October 2025)*

Gaitan, A., & Kuschnik, B. (2009). Tanzania's death penalty debate: An epilogue on Republic v Mbushuu. *African Human Rights Law Journal*, *9*(2), 459–481. https://www.ahrlj.up.ac.za/images/ahrlj/2009/ahrlj_vol9_no2_2009_gaitan_kuschnik.pdf (accessed 23 December 2025)

Garajszki, Z. (2022). Mikortól védő az ügyvéd? [When does the lawyer become a defense attorney?] *Magyar Jog, 69*(7–8), 422–430. https://real.mtak.hu/170676/1/GarajszkiZoltanMikortolvedoazugyved-MagyarJog2022.7-8422-430o.pdf *(accessed 31 October 2025)*

González, Y. R. (2009). The European Convention for the Prevention of Torture. In Gómez, I. F., & de Feyter, K. (Eds.), *International human rights law in a global context* (pp. 745–773). University of Deusto. https://www.corteidh.or.cr/tablas/r28067.pdf *(accessed 31 October 2025)*

Holé, K. (2003). *Büntető anyagi és eljárási jogunk, valamint az Európai Unió kívánalmai* [Our criminal substantive and procedural law, and the requirements of the European Union]. In Holé, K. (Ed.), *A büntető törvénykönyv és a büntető eljárási törvény módosításának elméleti és gyakorlati kérdései: Tudományos ülés, Budapest, 2002. november 15.*

[Theoretical and practical issues of amending the Criminal Code and the Criminal Procedure Act: Scientific conference, Budapest, November 15, 2002] (pp. 71–82). Budapest: Unió.

Juhász, Zs. (2006). Megújult az Európai Börtönszabályok [European Prison Rules renewed]. *Börtönügyi Szemle* [Prison Review], *25*(3), 44–58. https://epa.oszk.hu/02700/02705/00067/pdf/EPA02705_bortonugyi_szemle_2006_3_044-058.pdf *(accessed 31 October 2025)*

Kabódi, Cs. (1994). Emberi jogok a strasbourgi esetjog tükrében [Human rights in the light of Strasbourg case law]. *Börtönügyi Szemle* [Prison Review], (3), 1–12. https://epa.oszk.hu/02700/02705/00019/pdf/EPA02705_bortonugyi_szemle_1994_3_001-012.pdf *(accessed 31 October 2025)*

Kaiafa-Gbandi, M. (2019). *Az Európai Unió Bíróságának joggyakorlata az Európai Unió pénzügyi érdekeinek védelme és az alapvető jogok védelme terén: A Hans Åkerberg Fransson, Menci és Taricco I/II ügyek kritikai elemzése* [Case law of the Court of Justice of the European Union in the field of protecting the financial interests of the European Union and fundamental rights: A critical analysis of the Hans Åkerberg Fransson, Menci and Taricco I/II cases]. In Dannecker, G., Farkas, Á., & Jacsó, J. (Eds.), *Az Európai Unió pénzügyi érdekei védelmének büntetőjogi aspektusai* [Criminal law aspects of protecting the financial interests of the European Union] (pp. 53–65). Budapest: Wolters Kluwer. https://hercule.uni-miskolc.hu/files/5692/Az_EU_penzugyi_erdekeinek_fedellel.pdf *(accessed 31 October 2025)*

Kanev, K. (2018). *A büntetőeljárás terheltjeinek nyújtott jogi segítséggel és védelemmel kapcsolatos nemzetközi követelmények* [International standards relating to legal assistance and defense for persons subject to criminal proceedings]. In Bulgarian Helsinki Committee & Hungarian Helsinki Committee (Eds.), *Kézikönyv a büntetőeljárások terheltjeinek védőhöz és költségmentességhez való jogáról* [Handbook on the right of defendants in criminal proceedings to legal representation and legal aid] (pp. 4–33). https://helsinki.hu/wp-content/uploads/Vedohoz_valo_jog_kezikonyv_HUN_2018.pdf *(accessed 31 October 2025)*

Karsai, K. (2002). Magyar büntetőjog az európai integráció sodrásában [Hungarian criminal law in the wake of European integration]. *Jogtudományi Közlöny* [Legal Bulletin], *57*(2), 77–90.

Koósné Mohácsi, B., Lőrincz, J., Lukács, K., & Pallo, J. (2017). *Büntetés-végrehajtási jog [Penal law]*. Budapest: ELTE Eötvös Kiadó.

Kovács, P. (2001). A közösségi jogrendszer és az alapjogvédelem [The legal system of the European Union and the protection of fundamental rights]. *Acta Humana, 12*(44–45), 83–96.

Lakatos, I. (2002). Az emberi jogok kérdése az Európai Unióban [The issue of human rights in the European Union]. *Acta Humana, 13*(48), 46–66.

Nagy, A. (2011). A tisztességes eljáráshoz való jog az Emberi Jogok Európai Bírósága Magyarországgal kapcsolatos gyakorlatában, különös tekintettel az ésszerű határidő követelményére [The right to a fair trial in the case law of the European Court of Human Rights concerning Hungary, with particular regard to the requirement of reasonable time limits]. *Debreceni Jogi Műhely* [Debrecen Legal Workshop], *8*(3), 31–41. https://doi.org/10.24169/DJM/2011/3/3 *(accessed 31 October 2025) (accessed 31 October 2025)*

Nagy, G. (1999). Az Emberi Jogok Európai Egyezménye egyes rendelkezéseinek átvétele a nemzetközi jogban [The incorporation of certain provisions of the European Convention on Human Rights into international law]. *Acta Humana, 10*(35–36), 68–77.

Oraá, J. (2009). The Universal Declaration of Human Rights. In Gómez, I. F., & de Feyter, K. (Eds.), *International human rights law in a global context* (pp. 163–235). University of Deusto. https://www.corteidh.or.cr/tablas/r28067.pdf (accessed 31 October 2025)

Penal Reform International & Human Rights Centre, University of Essex. (2017). *Essex Paper 3: Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules.* https://cdn.penalreform.org/wp-content/uploads/2016/10/Essex-3-paper.pdf *(accessed 31 October 2025)*

Rozsnyai, K. F., & Koósné Mohácsi, B. (2021). Tisztességes tárgyaláshoz való jog [The right to a fair trial]. In Sonnevend, P., & Bodnár, E. (Eds.), *Az Emberi Jogok Európai Egyezményének kommentárja [Commentary on the European Convention on Human Rights].* Budapest: HVG-ORAC. (online: jogkodex.hu) *(accessed 31 October 2025)*

Seatzu, F., & Fanni, S. (2015). A comparative approach to prisoners' rights in the European Court of Human Rights and Inter-American Court of Human Rights jurisprudence. *Denver Journal of International Law & Policy, 44*(1), 21–40. https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1026&context=djilp *(accessed 31 October 2025)*

Szüts, M. (2004). Az EK Bíróság joggyakorlatának erősödő befolyása a nemzeti büntetőjogokra [The growing influence of ECJ case law on national criminal law]. In Gellér, B. (Ed.), *Györgyi Kálmán – Ünnepi kötet* [Györgyi Kálmán – Anniversary Volume] (pp. 533–558). Budapest: KJK–KERSZÖV.

Trechsel, S. (2014). *Why Must Trials be Fair? Israel Law Review, 31*(1–3), 94–119. http://dx.doi.org/10.1017/S0021223700015259 *(accessed 31 October 2025)*

Valesco, D. (2020). La problemática (necesaria y siempre insuficiente) fundamentación de los derechos humanos. *Deusto Journal of Human Rights, 6*, 69–97. http://dx.doi.org/10.18543/djhr.1874 *(accessed 31 October 2025)*

van Kempen, P. H. (2014). Introduction. In P. H. van Kempen (Ed.), *Criminal Law and Human Rights* (pp. XI–XXXIII). Farnham: Ashgate. https://ssrn.com/abstract=2953285 *(accessed 31 October 2025)*

Varga, Zs. (2021). Az uniós hatékony bírói jogvédelemhez való jog a nemzeti bíróságok előtti eljárásban [The right to effective judicial protection in the EU in proceedings before national courts]. In Bartha, I., Fazekas, F., Papp, M., & Varju, M. (Eds.), *Hatékony jogvédelem az Európai Unió jogában: Tanulmányok Várnay Ernő 70. születésnapja tiszteletére* [Effective legal protection in European Union law: Studies in honor of Ernő Várnay's 70th birthday] (pp. 17–35). Budapest: Társadalomtudományi Kutatóközpont.

Vókó, Gy. (2004). A fogvatartottak helyzete a Holland Királyságban és a Holland Antillákon [The condition of detainees in the Kingdom of the Netherlands and the Netherlands Antilles]. *Börtönügyi Szemle [Prison Review], 23*(2), 93–96. https://epa.oszk.hu/02700/02705/00058/pdf/EPA02705_bortonugyi_szemle_2004_2_093-096.pdf *(accessed 31 October 2025)*

Vókó, Gy. (2006). *Európai büntetés-végrehajtási jog [European penal law]*. Budapest–Pécs: Dialóg Campus.

Weller, M. (2001). Az Európai Unió Alapjogi Chartája [Charter of Fundamental Rights of the European Union]. *Acta Humana, 12*(43), 31–44.

Willems, A. G. (2014). The United Nations principles and guidelines on access to legal aid in criminal justice systems: A step toward global assurance of legal aid? *New Criminal Law Review, 17*(2), 184–209. https://doi.org/10.1525/nclr.2014.17.2.184 *(accessed 31 October 2025)*

International and European legal instruments

Council of Europe. (1950). *Convention for the Protection of Human Rights and Fundamental Freedoms* (European Convention on Human Rights).

Council of Europe. (1987). *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*.

Council of Europe, Committee of Ministers. (2006). *Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules*.

Council of the European Union. (2009). *Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (2009/C 295/01). Official Journal of the European Union, C 295*, 1–3.

European Union. (2016). *Charter of Fundamental Rights of the European Union* (2016/C 202/02).

Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 *on the right to information in criminal proceedings*.

Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 *on the right of access to a lawyer in criminal proceedings*

and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 *on procedural safeguards for children who are suspects or accused persons in criminal proceedings*.

Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 *on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings*.

United Nations. (1948). *Universal Declaration of Human Rights (UDHR).* G.A. Res. 217 A (III), 10 December 1948.

United Nations. (1966). *International Covenant on Civil and Political Rights (ICCPR).*

United Nations. (1966). *International Covenant on Economic, Social and Cultural Rights (ICESCR).*

United Nations. (1984). *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).*

United Nations. (1990). *Basic Principles on the Role of Lawyers* (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana).

United Nations. (2002). *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).*

United Nations General Assembly. (2015). *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).* G.A. Res. 70/175 (Annex).

United Nations Office on Drugs and Crime (UNODC). (2012). *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (A/RES/67/187).*

Case law and institutional documents

Åklagaren v. Hans Åkerberg Fransson, C-617/10 (CJEU, 26 February 2013).

Aksoy v. Turkey, App. No. 21987/93 (ECHR, 18 December 1996).

Artico v. Italy, App. No. 6694/74 (ECHR, 13 May 1980).

Benham v. the United Kingdom, App. No. 19380/92 (ECHR, 10 June 1996).

Beraru v. Romania, App. No. 40107/04 (ECHR, 18 March 2014).

Beuze v. Belgium, App. No. 71409/10 (ECHR, 9 November 2018).

Brandstetter v. Austria, Apps. Nos. 11170/84, 12876/87 & 13468/87 (ECHR, 28 August 1991).

Brannigan and McBride v. the United Kingdom, Apps. Nos. 14553/89 & 14554/89 (ECHR, 25 May 1993).

Brogan and Others v. the United Kingdom, Apps. Nos. 11209/84, 11234/84, 11266/84 & 11386/85 (ECHR, 29 November 1988).

Bykov v. Russia, App. No. 4378/02 (ECHR, 10 March 2009).
Campbell and Fell v. the United Kingdom, Apps. Nos. 7819/77 & 7878/77 (ECHR, 28 June 1984).
Černák v. Slovakia, App. No. 36997/08 (ECHR, 17 December 2013).
Commission v. France, Case 152/78 (CJEU, 10 July 1980).
Commission v. Greece, Case C-68/88 (CJEU, 21 September 1989).
Correia de Matos v. Portugal, App. No. 48188/99 (ECHR, 15 November 2001).
Direcția Generală Regională a Finanțelor Publice Brașov v. Vasile Toma and Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci, C-205/15 (CJEU, 30 June 2016).
Edwards v. the United Kingdom, App. No. 13071/87 (ECHR, 16 December 1992).
Elçi and Others v. Turkey, Apps. Nos. 23145/93 & 25091/94 (ECHR, 13 November 2003).
Engel and Others v. the Netherlands, Apps. Nos. 5100/71, 5101/71, 5102/71, 5354/72 & 5370/72 (ECHR, 8 June 1976).
European Commission. (2011). *Green Paper: Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention (COM/2011/0327 final).* Brussels.
European Committee for the Prevention of Torture (CPT). (2011). *21st General Report of the CPT (1 August 2010 – 31 July 2011) (CPT/Inf (2011) 28).* Strasbourg: Council of Europe.
European Committee for the Prevention of Torture (CPT). (2015). *Juveniles deprived of their liberty under criminal legislation (CPT/Inf (2015) 1-part rev 1).* Strasbourg: Council of Europe.
European Court of Human Rights (Registry). (2025, February 28). *Guide on Article 6 of the European Convention on Human Rights – Right to a fair trial (criminal limb).* Council of Europe.
Fedorova v. Russia, App. No. 73225/01 (ECHR, 13 April 2006).
Furman v. Georgia, 408 U.S. 238 (SCOTUS, 29 June 1972).
Golder v. the United Kingdom, App. No. 4451/70 (ECHR, 21 February 1975).
Gregg v. Georgia, 428 U.S. 153 (SCOTUS, 2 July 1976).
Ilse Koch v. Federal Republic of Germany, App. No. 1270/61 (European Commission of Human Rights, 8 March 1962).
Inter-American Commission on Human Rights (IACHR). (2017). *Report on measures aimed at reducing the use of pretrial detention in the Americas (OEA/Ser.L/V/II.163)*.
Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel, Case 11-70 (CJEU, 17 December 1970).
Ireland v. the United Kingdom, App. No. 5310/71 (ECHR, 18 January 1978).
J. Nold, Kohlen- und Baustoffgroßhandlung v. Commission of the European Communities, Case 4-73 (CJEU, 14 May 1974).
Jeronovičs v. Latvia, App. No. 44898/10 (ECHR, 5 July 2016).

Khodorkovskiy and Lebedev v. Russia, Apps. Nos. 11082/06 & 13772/05 (ECHR, 25 July 2013).
Kuopila v. Finland, App. No. 27752/95 (ECHR, 27 April 2000).
Kurt v. Turkey, App. No. 15/1997/799/1002 (ECHR, 25 May 1998).
Leas v. Estonia, App. No. 59577/08 (ECHR, 6 March 2012).
Lebedev v. Russia, App. No. 4493/04 (ECHR, 25 October 2007).
Leotsakos v. Greece, App. No. 30958/13 (ECHR, 4 October 2018).
Matanović v. Croatia, App. No. 2742/12 (ECHR, 4 April 2017).
Mbushuu alias Dominic Mnyaroje & Kalai Sangula v. The Republic, 1994 TLR 146 (CAT, 22 June 1994).
McShane v. the United Kingdom, App. No. 43290/98 (ECHR, 28 May 2002).
Niemietz v. Germany, App. No. 13710/88 (ECHR, 16 December 1992).
Öcalan v. Turkey, App. No. 46221/99 (ECHR, 12 May 2005).
Philis v. Greece, App. No. 16598/90 (ECHR, 1 July 1992).
Quaranta v. Switzerland, App. No. 12744/87 (ECHR, 24 May 1991).
Roland Rutili v. Ministre de l'Intérieur, Case 36-75 (CJEU, 28 October 1975).
Rowe and Davis v. the United Kingdom, App. No. 28901/95 (ECHR, 16 February 2000).
Sánchez Morcillo and Abril García v. Banco Bilbao Vizcaya Argentaria SA, C-169/14 (CJEU, 17 July 2014).
Schiesser v. Switzerland, App. No. 7710/76 (ECHR, 4 December 1979).
Schönenberger and Durmaz v. Switzerland, App. No. 11368/85 (ECHR, 20 June 1988).
Silver and Others v. the United Kingdom, Apps. Nos. 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75 & 7136/75 (ECHR, 24 October 1983).
Stefano Melloni v. Ministerio Fiscal, C-399/11 (CJEU, 26 February 2013).
Twalib v. Greece, App. No. 42/1997/826/1032 (ECHR, 9 June 1998).
United Nations. (1991). *Report of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990 (A/CONF.144/28/Rev.1)*.
Van Mechelen and Others v. the Netherlands, Apps. Nos. 21363/93, 21364/93, 21427/93 & 22056/93 (ECHR, 23 April 1997).
Vélez Loor v. Panama, Case No. 12.581, IACtHR Series C No. 218 (23 November 2010).