

RULE OF LAW and JUDICIAL INDEPENDENCE

**A survey of recent jurisprudence of the CJEU (LUX) and ECHR
(Strasbourg)**

By Lydia Heuveling van Beek



Co-funded by the
European Union

Short introduction (of myself)

On 10 december 2025 I will be seventy years old.

Fortyfive years of these have been spent in the Dutch Judiciary in first instance courts and in the Court of Appeal in Amsterdam. I have also served in the SSR, the Dutch institute for the education of the Judiciary.

I have studied Civil Law and European Law at Utrecht University and graduated in 1979. I have practiced as a full time judge in Civil law, Criminal law, Family law and Administrative law.



My subject today : Mission impossible !

Now here we are the second day of your advanced training and I have to tell you within 60 minutes all about *recent jurisprudence of CJEU and ECHR in the area of the Rule of Law and Judicial independence*.

Interpreting the word recent in my task as from the last 1,5 years and making first selection I found that CJEU (hereafter Lux) and ECHR (hereafter Strassbourg) tend to publish at least two significant judgements per month which leaves me to talk in 45 minutes about 36 judgements !

That is impossible! And in three months from now there are at least 6 new judgements asking for your and my attention.

Practicalities and checklist for daily use

So I decided first to offer you a practical framework like a kind of checklist for daily use and to show you with the help of this checklist how to distinguish quickly the key decisions of Lux and Strassbourg for daily use in your Court.



First of all I have **three important maxims** for you for every day use.

- Democracy under the Rule of Law is a way of life for society.
- The Judiciary must understand society and be in society.
- Society must understand the Rule of Law.

Next there are the six focuspoints of the Rule of Law every citizen must know:

- Nobody is *above* the law
- *Everybody* is equal *before* the law
- *Legality*; all powers must be written down in the constitution and in the law.
- *Separation of State power* between lawmakers, executive power and Judiciary
- *Fundamental Human Rights* for all citizens
- *Protection of the rights of citizens* against the *State* and *other citizens*

The connexion between the first three maxims and the six focuspoints is that as Magistrates it is our duty to explain to society in our rulings when and where (one of) these six points is/are in danger and what is to be done about this in a way that society understands, accepts *and* acts accordingly ...

Whenever you are at work and you have the feeling in your case there is something wrong with one of the six points you have to **act ex officio (automatically)**, even if none of the parties is mentioning the subject.

At that point we as judges must fully appreciate the **difference between the ECHR and the EU treaties** to understand how we best can do this important job ex officio.

Recollect always that the ECHR is all about **the value and integrity of the individual human being** whereas the EU treaties in essence are based on the **four economic freedoms of free movement of goods, services, capital and persons within the EU.**

Human Rights and economic freedoms however became really inseparable with Lisbon Treaty of December 2007 when article 2 TFEU was worded in its present way:

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the Rule of law and respect for human rights, including the rights of persons belonging to minorities.”

Different ways to operationalize the six focuspoints that protect our citizens

To get to Strassbourg you as a magistrate yourself or one of the parties in your case have to **exhaust all local remedies**, while to get to Lux even **from the first instance as a judge you can pose a prejudicial question**.

The latter way is often the *quicker*, however you must keep in mind that at the background of the case you are handling there must be some *relation with the four economic freedoms*. What helps a lot is that the principle of a level playing field in EU to exercise the four freedoms includes *an indepent Judiciary* as an indispensable condition.

Since 2007 Lux and Strassbourg have found a way to communicate formally and informally on the concept the independency and impartiality of the Judicial *System* as Strassbourg calls it.

As judges/magistrates we can focus on **one concept of rules and definitions** that is important if we want to be independent and impartial judges/magistrates as defined by both ECHR and TFEU.

Strassbourg produces and updates a factsheet on independence of the Justice system.

https://www.echr.coe.int/documents/d/echr/FS_Independence_justice_ENG

You will see that fair trial of article 6 ECHR and an independent and impartial court are two sides of the same coin. There is an unbreakable bond between the two.



Art. 6 imposes an obligation on *every* national court or judge to check whether it was instituted as an impartial tribunal by law. You have to act **ex officio** here.

Three different inroads

The **first inroad** is all about Courts and composition of the Courts. It requires a Tribunal established by law, statutory independent both according to objective and subjective criteria and absence of outside influences on the court.

Courts are composed of judges and they must make an impression of independence/ appear to be independent.

The **second inroad** demands objective guarantees as to the careers of judges.

The **third inroad** claims to protect of the human rights and the private life of judges/magistrates notably the right of respect for one's private life, freedom of religion, freedom of assembly and association and freedom of expression.

Strasbourg has published a factsheet about this too:

<https://ks.echr.coe.int/documents/d/echr-ks/protection-of-judges>

My subject revisited

CJEU Lux Since 2022 the Court publishes an annual review of its major cases. If you want to know more you may find it here:

https://curia.europa.eu/jcms/jcms/p1_3905249

A lot of information is also to be found in the annual report of CJEU:

[Annual Report - Court of Justice of the European Union - CURIA](#)

For 2024 it has just been released on 18 April this year

[Judicial activities](#)

Strasbourg ECHR

If you want it all there is this document for you to read

[Annual report ECHR 2024](#)

Page 64 and further and you will find all important cases of Strasbourg in 2024.

If you want to know more about how the sentences of Strasbourg are followed up by the member States you can look in this document.

<https://www.coe.int/en/web/execution/annual-reports>

It is the yearly report of the Council of Ministers.

Here for instance you will find what happened the year after the Walesa Pilot judgement and with all the other cases of Polish judges still pending.

My subject for today revisited 2

Now looking again at my first selection of 36 judgements, I made a second necessarily *subjective personal* selection and came to

only 13 judgements

which I propose to walk through together.



CJEU Lux

C-181/21 en C269/21 9 Januari 2024

No real question of EU law no answer from the court, no judge no answer I

T 530/22 to 533/22 4 June 2024

Is the Rule of Law negotiable ? Who are the guardians of the Rule of Law in EU ? I

C554/21, C 622/21 and C 727/21 11 July 2024

Who is responsible for deciding the case versus who is responsible for consistent case law

C326/23 7 november 2024

No light between the definition of an independent judge used by Lux or by Strassbourg; no judge no answer II (even if you are a Supreme Court)

C 197/23 14 November 2024

No messing around with (usually at random) allotted cases I

C 146/23 and C 274/23 25 February 2025

**Who are the guardians of the Rule of Law in EU ? II Basically the national Judiciary!
By bringing prejudicial questions to Strassbourg the CJEU if need be, CJEU can help us to protect the Rule of Law within the national Trias Politica. Also with regard to execution of decisions of the EU Council i.e. the milestones**

C 16/24 27 Februari 2025

No messing around with (usually at random) allotted cases II

C 647/21 and C 648/21 6 March 2025

**No messing around with judges either;
if you cannot move the case...you certainly cannot at random move the judge
responsible for the handling of the case**

Strassbourg ECHR

50849/21 23 November 2023 Walesa (former president of Solidarnosc and the Polish republic)

Pilot judgements; sometimes the Rule of Law needs famous warriors for democracy to do the trick

54699/14 26 March 2024 Kartal

A member of an inspection board for the judiciary/judge and prosecutors as a Civil servant has rights under art. 6, despite being part of a State power of the Trias Politica (Eskelinen test)

If that will help him is very much the question though, since he is convicted as a member of a forbidden organisation and given the political situation in Turkey. But his case will help other civil servants in trouble as we will see!

16915/21 20 February 2024 Danilet

Freedom of speech on the internet (Facebook) results in a disciplinary sanction of 5% cut of salary for two months and no possibility to apply for a promotion in the three years following the sanction. Mr. Danilet as a judge is protected under art. 10 for his comments on the internet. As a judge you know the game of the game, so no infraction on the private life of mr. Danilet

20140/23 23 January 2025 Antonyan

A friendship of the president of Supreme Judicial Council and and a Minister of Justice is just asking for trouble. How on earth can that Tribunal be an impartial Court ? Eskelinen and Kartal revisited. The appropriate form of redress is reopening of national proceedings in accordance with article 6.

16111/19 and 4737/21 27 March 2025 Goluvchuk

Irremovability of judges is a matter not taken lightly even if there is a necessary judicial reform; Sauce for the goose is sauce for the gander, no significant difference between judges of the old Supreme Court and the High Administrative Court; Eskelinen once more; Would a pilote judgement have worked here?

Conclusions for daily life on the bench of the Judiciary and conclusion of my lecture

I started with these three maxims.

- Democracy under the Rule of Law is a way of life for society.
- The Judiciary must understand society and be in society.
- Society must understand the Rule of Law.

These are high ideals but you and I have to make them small and workable in each case with help of the six focuspoints and the three inroads I mentioned. For our citizens Lux and Strassbourg are far away and going there costs time and a lot of money, which most of them do not have. Therefore it is our daily task to bring European Laws to our citizens. We must use the newest jurisprudence of Lux an Strassbourg directly and creatively in your cases on a daily basis.

Thank you for your patience!

**And now:
Time for questions and
discussions!**

