Евразийская адвокатура. 2026. № 4 (81). С. 128.
Eurasian Advocacy. 2026;(4(81)):128.

Правосудие и правоохранительная деятельность в евразийском пространстве
Научная статья
УДК 341.645.5
doi 10.52068/2304-9839_2026_81_4_128

ЕВРОПЕЙСКИЙ СУД ПО ПРАВАМ ЧЕЛОВЕКА И МЕЖДУНАРОДНОЕ ЧАСТНОЕ ПРАВО

НОВРУЗОВА Саадат Самед кызы
Старший преподаватель кафедры права Университета Хазар
AZ1096, г. Баку, ул. Мехсети Гянджеви, 41, Азербайджанская Республика

Аннотация: Одним из результатов деятельности Европейского суда по правам человека (далее – ЕСПЧ) является то, что его взаимодействие с международным частным правом (далее – МЧП) приобретает особое значение. МЧП регулирует гражданско-правовые, трудовые, семейные, имущественные и другие частноправовые отношения, содержащие иностранный элемент. В этой области национальные и международные суды рассматривают вопросы международной юрисдикции, применимого права, признания и исполнения решений иностранных судов, семейные отношения, международное усыновление и другие подобные вопросы. Ряд прав человека, являющихся предметом МЧП, непосредственно закреплен в соответствующих статьях Европейской конвенции о защите прав человека и основных свобод (далее – Конвенция). С другой стороны, в своих жалобах заявители ссылаются на широкий спектр норм МЧП, что требует от ЕСПЧ выражения своей позиции по отношению к этим нормам. Представленная статья посвящена изучению особенностей взаимодействия между деятельностью Европейского суда по правам человека и МЧП на основе анализа соответствующих прецедентных судебных решений, определивших позицию ЕСПЧ в отношении норм МЧП.

Ключевые слова: европейский суд, права человека, конвенция, международное частное право, прецедент
Для цитирования: Новрузова С.С. Европейский суд по правам человека и международное частное право // Евразийская адвокатура. 2026. № 4 (81). С. 128. https://doi.org/10.52068/2304-9839_2026_81_4_128

Justice and Law-Enforcement Activity in the Eurasian Space
Original article

EUROPEAN COURT OF HUMAN RIGHTS AND PRIVATE INTERNATIONAL LAW

NOVRUZOVA Saadat Samed kizi
Senior Lecturer of Law Department of the Khazar University
AZ1096, Baku, Mehseti Ganjavi Str., 41, Azerbaijan Republic

Abstract: One consequence of the expanding activity of the European Court of Human Rights (hereinafter the «ECtHR») is that its interaction with private international law (hereinafter «PIL») is taking on particular significance. PIL governs civil, labor, family, property, and other private-law relationships that contain a foreign element. In this field, national and international courts address issues such as international jurisdiction, applicable law, the recognition and enforcement of foreign judgments, family relations, international adoption, and other similar matters. A number of human rights relevant to the subject matter of PIL are directly enshrined in the articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the «Convention»). Conversely, applicants frequently invoke a wide range of PIL issues in their complaints, requiring the ECtHR to articulate its position regarding these norms. This article examines the nature of the interaction between the ECtHR's activities and PIL through an analysis of relevant case law that has defined the Court's stance on PIL rules.

Keywords: European Court, human rights, convention, private international law, precedent
For citation: Novruzova S.S. European Court of Human Rights and Private International Law = Eurasian Advocacy. 2026; 4 (81):128. (In Eng.). https://doi.org/10.52068/2304-9839_2026_81_4_128

Modern global trends – particularly globalization and the emergence of new technologies – are constantly expanding the scope for cross-border activities by individuals and legal entities.

The widening range of relationships between parties residing in different countries – spanning family, property, and inheritance law, among other areas – has, in turn, heightened the importance of

© Новрузова С.С., 2026 Распространяется по лицензии Creative Commons Attribution 4.0 International License (CC BY).

PIL. Traditionally, PIL governed cross-border relations based on the principle of state sovereignty. That is, when faced with the question of recognizing legal documents issued in another country, each state retained the right to accept or reject them in accordance with its own domestic laws. The work of the European Court is characterized by a gradual curtailment of this practice, as the Court prioritizes human rights over state sovereignty. When examining a specific complaint, the Court's primary task is to verify whether the decisions of national courts comply with the standards of the Convention. Thus, the Court's interaction with PIL can be summarized as an effort to humanize the field and place human rights at its core.

Although the Convention is not a document that establishes rules of private international law, several of its articles (specifically Articles 6 and 8, and Article 1 of Protocol No. 1) address key aspects of the interplay between Convention law and PIL. To examine the precedents established by the Court in these areas and to draw general conclusions, we consider it appropriate to briefly review the relevant case law for each article individually.

1. Right to a fair trial (Article 6 of the Convention)

The seminal case establishing the Court's precedent regarding this article is «Pellegrini v. Italy» [1]. The applicant, M.G. Pellegrini, alleged that Italian courts had granted a request to enforce a judgment by a Vatican ecclesiastical court declaring her marriage null and void without conducting a proper review. The ecclesiastical court had failed to adequately observe the adversarial principle and the right to a fair trial; the applicant had not been informed of the grounds and substance of the claims against her, thereby depriving her of the right to an adequate defense. The Italian courts had failed to verify whether the guarantees of a fair trial had been respected during the ecclesiastical proceedings.

The Court found a violation of Article 6 § 1 of the Convention, noting that when considering the enforcement of foreign judgments, Contracting States must rigorously verify whether those judgments were issued in accordance with the principles of the rights of the defense and a fair trial; if violations are found, they must refuse recognition and enforcement. The Italian State had failed to properly verify compliance with these rights before authorizing the enforcement of the ecclesiastical judgment; consequently, a violation of Article 6 of the Convention had occurred.

The European Court of Human Rights' case law in this matter has significantly influenced the Court of Justice of the European Union, European civil procedural law, and the practice of resolving family disputes. Under the rule established by the Court, national courts must not engage in the practice of blindly recognizing and enforcing foreign judgments. Respect for the right to a fair trial in foreign courts must be an integral part of national public policy, and a finding that a fundamental principle has been violated by a foreign court should result in a refusal to enforce the judgment in question.

In particular, it should be noted that following the Court's ruling in this case, Italian courts put an end to the practice of automatically enforcing Vatican judgments. Italian courts now strictly scrutinize whether ecclesiastical decisions are issued in a manner consistent with the right to a fair trial. Consequently, ecclesiastical judicial bodies have also been incentivized to adapt their practices to these new realities.

This precedent set by the Court plays a significant role in eradicating previously common instances of abuse related to marriage. For example, it rules out the possibility of one spouse secretly obtaining a divorce or an annulment of the marriage in their home country – using simplified procedures – and subsequently having that decision recognized within the European legal area. Specifically, attempts to deprive a woman of alimony or a share of marital assets through the retroactive annulment of a marriage in religious courts have become impermissible within the Council of Europe area.

It should be noted that the legal position that became dominant following the «Pellegrini» case has also impacted the practice of «mutual trust» that exists in this field under European Union law.

2. Right to respect for private and family life (Article 8)

In the case of «Neulinger and Shuruk v. Switzerland» [2], the Grand Chamber examined the interplay between the provisions of the Hague Convention on Child Abduction and Article 8 of the Convention. The case involved a Swiss national, Isabelle Neulinger, who had a son from her marriage to an Israeli national. The child's father joined a radical religious movement, leading to the couple's divorce. Neulinger unilaterally took the two-year-old child and returned to Switzerland. The domestic court hearing the case ordered the child's immediate return to Israel in accordance with the requirements of the Hague Convention. The European Court, having examined the compatibility of the return order with the rights of the mother and child guaranteed by Article 8 of the Convention, ruled that the application of the Hague Convention in this instance could not be automatic. The circumstances of the case required an effective, individualized assessment, taking into account the

best interests of the child. Over the years of legal proceedings, the child had lived in Switzerland for several years, becoming fully integrated into society, attending school, and speaking French; returning to Israel, a place he had no memory of, could cause him serious psychological trauma. On the other hand, if the child were returned, the mother would be compelled to return with him, where she faced criminal prosecution and severe financial penalties for abduction – consequences that could make it impossible for her to continue raising the child.

This court ruling sparked significant protest and sharp criticism. It created a conflict between the Hague Convention's requirement for immediate return and the ECtHR's requirement for an effective, individualized assessment. Later, in similar cases, the Court was compelled to soften its stance. It became inevitable that the criterion of an «individualized, effective assessment» would lead to abuse. Child abductors (either parent) would effectively try to buy time by applying to national courts and subsequently to the European Court. This, in turn, renders the provisions of the Hague Convention a dead letter.

In the case of «X v. Latvia» [3], the Court noted that national courts are not required to assume the responsibilities of the child's country of origin; rather, they must simply ensure safe and adequate conditions for the child in the country of return. In that case, the mother had secretly taken her three-year-old daughter from Australia to Latvia, and the father sought the child's return. Latvian courts ordered the child's return, disregarding the mother's arguments that the father had a criminal record and a history of violence, and that sudden separation from the mother would cause the child psychological trauma (as confirmed by a Latvian psychologist's report). In other words, the Latvian courts simply adhered to the Hague Convention. However, the Court found a violation of Article 8 of the Convention, radically shifting its previous position and formulating the concept of a «dual procedural obligation». Thus, on the one hand, the national court considering the return request had to take the family situation as a whole into account. The court was neither required nor able to conduct an in-depth analysis or decide with whom the child would be better off living in the long term; that is a matter for the courts of the country of origin to decide.

On the other hand, risks to the child's best interests had to be fully assessed. If the abductor presents convincing, evidence-based arguments regarding a risk to the child (such as information about abuse or official psychological findings regarding trauma), the national court must consider them and provide a reasoned assessment in its decision. In the case of «X v. Latvia», the Latvian courts failed to properly assess these arguments.

The court must consider whether adequate safeguards will be provided to protect the child's best interests upon their return. It must examine whether the mother would be able to return with the child, whether she would be immediately separated from the child at the border, and whether the legal system of the receiving country is capable of protecting both mother and child from domestic violence during the substantive legal proceedings there.

Thus, in «X v. Latvia», the court fulfilled the requirement to conduct a substantive legal assessment; the requirement to assess the situation (specifically, the child's optimal living arrangements) took precedence over mere procedural fairness. While courts should not spend excessive time re-evaluating the child's living conditions, neither should they automatically order the child's return; instead, they must take arguments regarding risks into account.

In the case of «Mennesson v. France» [4], a French couple (Dominique and Sylvie Mennesson), unable to conceive naturally, entered into a surrogacy agreement in the United States (California). Twins were born as a result, and US authorities issued birth certificates listing the Mennessons as their legal parents. Upon the family's return to France, the French government refused to record the birth certificates in the national civil registry, as surrogacy was prohibited under French law. The Mennessons appealed to the European Court of Human Rights, alleging a violation of their right to respect for private and family life under Article 8 of the Convention. The Court examined the complaint from two perspectives. First, it found no violation of the parents' family rights. The Court noted that France has the right to prohibit surrogacy within its territory. However, the government had not prevented the family from living together and, consequently, had not violated their family rights. Second, the Court affirmed that national prohibitions cannot conflict with the best interests of the child. By failing to recognize Mr. Mennesson's biological paternity, the French government violated the child's right to identity.

The Court's ruling in the Mennesson case had significant implications for private international law within the European legal area:

1) The public policy exception. States party to the Convention retain the right to prohibit surrogacy, but they cannot refuse to recognize foreign documents based on that prohibition – or on national moral values – in cases concerning the child's fundamental rights and legal identity. Thus, the aforementioned

European Court precedents established the «best interests of the child» as a priority principle in private international law regarding children's rights.

2) In an advisory opinion issued in 2019, the European Court established that states are required to recognize a child's legal relationships not only with the biological father but also with the social mother (at least in cases of adoption). Taking into account the case law of the European Court of Human Rights and the advisory opinion, the supreme courts of Germany, Austria, Spain, Italy, and other countries have established appropriate procedures to ensure the identification of children born to surrogate mothers.

3) In October 2019, the French Court of Cassation ruled that the birth certificates issued to the Mennesson twins in the United States must be registered in the French civil registry.

3. Protection of property (Article 1 of Protocol No. 1)

The European Court's primary contribution to cases concerning the protection of property lies in its definition of an expanded concept of property. In international humanitarian law and many treaties, property has traditionally been viewed as a right «in rem». Under the concept developed by the European Court, the notion of property encompasses all types of economic assets, as well as concepts such as lost profits and expected gains. According to the Court's position, a property right arises not only when it is formally registered in the relevant registries; certain other actions by the respondent state may also be interpreted as a recognition of that property right.

For instance, in the case of «Beyeler v. Italy» [5], the Swiss collector Ernst Beyeler purchased a Van Gogh painting, «Portrait of a Young Peasant», from an Italian private collector for 600 million lire. Under Italian law, the state holds a right of first refusal regarding the purchase of cultural heritage items. When such items are sold, the relevant authority must be notified immediately and may, if deemed necessary, purchase the item at a fixed price. In 1983, the Italian Ministry of Culture learned that the buyer was a Swiss national but took no action; it neither demanded the sale of the work to the state nor authorized its export from the country. In 1988, when Beyeler found a buyer willing to purchase the work for $8.5 million, the Italian Ministry of Culture seized the painting and returned the 600 million lire that had been paid for it in 1977. In other words, accounting for eleven years of inflation and the work's actual market value, Beyeler suffered significant financial loss. Nevertheless, Italian courts ruled in favor of the Ministry of Culture.

The Court, sitting as a Grand Chamber, unanimously ruled in favor of Beyeler. It noted that Beyeler's actual possession of the artwork for over ten years, along with his payment of maintenance costs during that period, clearly fell within the scope of Article 1 of Protocol No. 1. Regarding the formalization of ownership rights, the Court observed that the Italian authorities took no action for five years after learning of the sale to Beyeler; instead, they remained passive, leaving the actual owner in a state of legal uncertainty. The fact that the authorities took action despite knowing the work had been sold for a substantial sum indicates an intent to secure unjust enrichment.

The significance of this precedent can be summarized as follows:

– Authorities must act in a timely and lawful manner when notified of a disputed situation. Actions similar to those taken in the Beyeler case would constitute bad faith in a legal sense.

– If a foreign investor invests in an asset and the State, through inaction or specific actions, creates the impression that there is no issue, the investor holds legitimate expectations of benefit that are protected on a par with the right to property.

– The fact that an object constitutes an item of cultural heritage, or falls into another special category, cannot justify a departure from the general rule.

Conclusion

The ECtHR does not seek to replace private international law with a unified system of human rights protection. Instead, it has assumed a more limited yet significant role: ensuring that the application of private international law rules remains compatible with the fundamental rights guaranteed by the Convention.

This does not mean that human rights automatically prevail over every rule of private international law. Rather, the Court's jurisprudence demonstrates a process of mutual reconciliation. Private international law continues to pursue the goals of international cooperation, predictability, and legal certainty, while the Convention requires that these goals be achieved in ways compatible with individual rights. Consequently, the future development of European private international law will increasingly depend on a dialogue among national courts, the Court of Justice of the European Union, the European Court of Human Rights, the Hague Conference on Private International Law, and other international institutions. The key conclusion is that sources of private international law have become a significant element of the legal environment in which the ECtHR operates, while the Court's case law has become a major factor constraining the development of private international law regarding human rights protection and influencing its interpretation.

Список источников/References:

1. Pellegrini v Italy, no. 30882/96, 20 July 2001.
2. Neulinger and Shuruk v Switzerland [GC], No. 41615/07, 6 July 2010.
3. X v Latvia [GC], no. 27853/09, 26 November 2013.
4. Mennesson v. France, no. 65192/11, 26 June 2014.
5. Beyeler v Italy, no. 33202/96, 5 January 2000.

Статья поступила в редакцию 27.09.26;
одобрена после рецензирования 30.09.26;
принята к публикации 30.09.26.

The article was submitted 27.09.26;
approved after reviewing 30.09.26;
accepted for publication 30.09.26.