

# EUROPEAN UNION LAW IN FINNISH COURTS: TRACING THE CASE-LAW

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*European Union law can be examined at Union level and at Member State level. While the research of case law at an EU level is greatly facilitated by well-indexed databases maintained by the CJEU and EurLex, access to national case law is more complicated due to absence of similarly well-organised sources. This article expands on a line of inquiry introduced in my recent book setting out the application of EU law by selected Finnish courts during the first 30 years of EU membership (1995-2024). The article proposes first a hierarchical order of four concentric circles of national case law applying EU law. Second, it applies a system of three categories of cases – clear, unfolding and latent EU cases – to help identify and organise national case law. The categorisation can be helpful in identifying national case law which is relevant to the EU, as much of it may otherwise remain undiscovered. The national courts and their case law are essential in enforcing rights stemming from EU law.*

## 1 INTRODUCTION

In Opinion 1/09 (*Agreement creating a Unified Patent Litigation System*), the Court of Justice of the European Union (CJEU) articulated the roles of the Member States and the national courts in the area of EU law. On the one hand, the Member States are bound by the principle of sincere cooperation to ensure the application of and respect for European Union law. On the other hand, it is for the national courts and for the Court of Justice to ensure the full application of European Union law in all Member States and to ensure judicial protection of an individual's rights under that law.<sup>1</sup>

It follows from this setting that the EU law can be examined at Union level and at Member State level. The research on application of EU law by the courts at Union level is greatly facilitated by the fact that the relevant case law is produced by a single institution in Luxembourg and is easily accessible in Union databases, and it is accurately indexed and available in all languages. It is more difficult to examine national application practices. National application is decentralised across all courts in the 27 Member States and is not currently indexed in Finland, for example. Furthermore, unlike case law at Union level, national case law does not focus solely on the EU legal perspective, but all national decisions involve a varying degree of Union law and national law. Even recognising when a case should be classified as an EU application case can be a challenge.

The objective of this article is to present two aspects of application of EU law by the courts in Finland. It sets out a schema for hierarchy of the EU cases of the Finnish courts (Section 2) and proposes of threefold classification for the cases based on the obviousness

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<sup>1</sup> CJEU, Opinion 1/09 *Agreement creating a Unified Patent Litigation System* EU:C:2011:123 para 68.

of the EU law aspect (Section 3). The starting point when examining the national application of the EU law at the Member State level is the fact that every national judge is also an EU judge.<sup>2</sup> In the Finnish context, this means that the EU judges at the apex of the judicial system in Finland are the Supreme Court (*korkein oikeus* – KKO; *högsta domstolen* – HD) and the Supreme Administrative Court (*korkein hallinto-oikeus* – KHO; *högsta förvaltningsdomstolen* – HFD).<sup>3</sup> The cases cited below stem from these two courts.

## 2 HIERARCHY IN FOUR CONCENTRIC CIRCLES

According to the statistics of the National Court Administration, in 2024, Finnish courts decided a total of 617,080 cases.<sup>4</sup> Of these decisions, all the precedents issued by the two supreme courts are systematically published, whereas the publication of the decisions of the courts below is much more sporadic and selective. The published decisions are accessible free of charge on Finlex database.<sup>5</sup>

In view of EU law, it would be useful to know, how many of these cases involved an element of EU law. However, statistics regarding this particular aspect are not available. Consequently, it is not possible to provide a reliable estimate of their number.

For the purposes of this article, the term ‘EU case’ has been selected to denote cases adjudicated by a national court, in this instance, a Finnish court, that contain one or more elements pertaining to EU law.<sup>6</sup> The intensity of the EU law element varies. Sometimes only a minor aspect of such a case concerns EU law. Even these matters should be considered EU cases in this classification. In so far as EU law is mentioned and discussed to a notable extent by the decision in question, the case should fall in this category. The purpose of the classification is only to illustrate the existence of these two groups and not to suggest that national cases and EU cases would be two completely separate, ‘watertight compartments’.

In light of the aforementioned context, the cases adjudicated by the Finnish courts can be categorized into two distinct groups: (a) ‘national cases’, which encompass cases determined exclusively on the basis of national law, and (b) ‘EU cases’, which pertain to cases that involve an element of EU law in conjunction with national law.

One method of presenting the group of EU cases and better setting out their mutual hierarchical relation is to start from a concept of four concentric circles. In this concept, the ‘core’, or the innermost circle, refers to the specific instance in which one of the Finnish supreme courts formally requested a preliminary ruling from the CJEU before deciding the case. A reference point for these can be found in the CJEU’s case law database, and the national cases are published as precedents in the Finlex database. These cases are the sources

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<sup>2</sup> This is true both in the EU Member States and in the EEA states.

<sup>3</sup> Basic structure of the court system is as follows: Below the Supreme Court are the courts of appeal (*hovioikeus* / *hovrätt*) and the district courts (*kärjäoikeus* / *tingsrätt*). Under the Supreme Administrative Court there are the administrative courts (*hallinto-oikeus* / *förvaltningsdomstol*). There is also a Market Court (*markkinaoikeus* / *marknadsdomstolen*), from which the appeal lies to either of the supreme courts, according to the case. However, the application by these courts, or other judicial instances, is not discussed here. See <<https://tuomioistuimet.fi/en/index/tuomioistuinlaitos/tuomioistuimet.html>> accessed 1 February 2026.

<sup>4</sup> <<https://tuomioistuinvirasto.fi/en/index.html>> accessed 1 February 2026.

<sup>5</sup> <<https://www.finlex.fi/en>> accessed 1 February 2026.

<sup>6</sup> The notion of EU case is a technical term, which is inspired by a study concerning Poland. Monika Domańska, Dawid Miąsik, and Monika Szwarc-Kuczer, *National courts and the application of EU law: lessons from Poland* (Routledge 2024).

of law at the level of precedent in the national system, and their content has been guided by the interpretation requested from the Court of Justice of the European Union.<sup>7</sup>

The second circle comprises additional precedents from the two supreme courts that pertain to EU law and explicitly cite EU law as a source of law. However, the decisions included in this category have not been preceded by a request for preliminary ruling to the CJEU.

The third circle consists of decisions by other national judicial courts (district courts, courts of appeals, administrative courts, special courts, etc.) subsequent to preliminary ruling procedures. While the value of these as sources of national law may be more limited, their significance in relation to EU law is determined by the dialogue initiated between the national court and the Court of Justice. From the perspective of EU law, however, these are important cases, as the Court of Justice has been involved by issuing a preliminary ruling in the course of these cases.<sup>8</sup>

The fourth and outermost circle encompasses rulings issued by tribunals other than the highest judicial bodies, pertaining to EU law, and lacking a request for preliminary ruling. This circle consist thus of cases decided by the courts below and the decisions of which are not normally published in Finlex.

Even if the two innermost circles are the most important ones and the cases therein are easily accessible when published as precedents, they may still be somewhat difficult to find as they are not indexed as EU cases.

### 3 THE CLEAR CASES, THE UNFOLDING CASES AND THE LATENT (HIDDEN) CASES

For the purposes of a recent study by the author of the current article (*EU-oikeus Suomessa*, AlmaInsights 2025), extensive research was carried out manually in the databases to identify the Finnish EU cases for the period 1995-2024.<sup>9</sup> In that book, the case law is presented as classified according to different sources of EU law (the treaties, the Charter, the international agreements, regulations, directives, and other instruments). Based on the book, this article proposes a threefold framework for the classification of national EU cases. The objective of the framework is to facilitate a deeper understanding of the variations in the national EU cases and to cast light on the various formats in which these cases manifest. As a kind of conceptual model, the EU cases can be divided into three groups: (1) clear EU cases, (2) unfolding EU cases, and (3) latent (hidden) EU cases. The following examples are presented to illustrate these three categories of the case law examined in the aforementioned study.

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<sup>7</sup> The role of this judicial dialogue is discussed in Niilo Jääskinen, 'Judicial dialogue between national supreme administrative courts and the Court of Justice of the European Union' in Koen Lenaerts, Jean-Claude Bonichot, Heikki Kanninen, Caroline Naômé and Pekka Pohjankoski (eds), *An ever-changing Union?: perspectives on the future of EU law in honour of Allan Rosas* (Hart 2019) 129.

<sup>8</sup> The role of these cases at EU level is discussed in Graham Butler, 'Lower Instance National Courts and Tribunals in Member States, and Their Judicial Dialogue With the Court of Justice of the European Union' (2021) 4(2) *Nordic Journal of European Law* 19.

<sup>9</sup> Pekka Aalto, *EU-oikeus Suomessa* (AlmaInsights 2025) 57.

### 3.1 CLEAR EU CASES

The first and most obvious group consists of ‘*clear EU cases*’ where the EU law dimension is evident. This is the situation, for example, in cases involving the application of an EU regulation. This instance involves a source of Union law, and its application is also directly visible in the text of the decision. To illustrate this, we take one example of each supreme court.

In a decision of 12 March 2025, the Supreme Court gave a ruling in a case concerning enforcement (KKO:2025:30).<sup>10</sup> A Finnish company had made a payment to a company registered in Dubai, but the assets that were the subject of the payment had been seized by the enforcement authority in accordance with Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.<sup>11</sup> Following the action for annulment concerning the decision of asset seizure, the Supreme Court concluded, at last instance, that the Ministry of Foreign Affairs had presented credible evidence that the seized funds were intended to be made available or used by a person subject to coercive measures. This is an example of a clear EU case: the contested decision was from the beginning based on a directly applicable EU Regulation and it was evident from the outset that the case had a direct base in EU law.

The Supreme Administrative Court gave a decision on 3 February 2025 on reuse of public data on for journalistic purposes concerning the taxation of natural persons (KHO:2025:15).<sup>12</sup> In Finland, certain elements of natural persons’ tax data are public and there is a long tradition that this information is republished by various journals for persons with income above a certain level (100,000 or 150,000 EUR, for example). In this case, a natural person requested from a journal, on the basis of the GDPR Regulation,<sup>13</sup> that his tax data is removed from the publisher’s web site. The Supreme Administrative Court put in balance the protection of personal data and the exercise of freedom of expression and information. The Court determined that the processing and publication was made for journalistic purposes, for which there is an exception in the regulation, and therefore dismissed the claim. Here it can be observed that as in the case above, the link to EU law was present from the beginning, as the essence of the claim for the removal of personal data was based on the directly applicable GDPR Regulation.

### 3.2 UNFOLDING EU CASES

The second group includes cases where the EU dimension emerges perhaps somewhat unexpectedly. These could be characterised as ‘*unfolding EU cases*’. In the course of proceedings in a national court, EU law is invoked even though it may not have been

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<sup>10</sup> Korkein oikeus / Högsta domstolen, 12 March 2025, ECLI:FI:KKO:2025:30 (<<https://www.finlex.fi/ecli?uri=ECLI:FI:KKO:2025:30&locale=fi>>).

<sup>11</sup> Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2024] OJ L78/6.

<sup>12</sup> Korkein hallinto-oikeus / Högsta förvaltningsdomstolen, 3 February 2025, ECLI:FI:KHO:2025:15 (<<https://www.finlex.fi/ecli?uri=ECLI:FI:KHO:2025:15&locale=fi>>).

<sup>13</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2026] OJ L119/1.

previously raised in the case or the effect of EU law has not been assessed, for example, for procedural reasons. It is then up to the court to consider whether the source of EU law invoked is finally applicable and what its significance is in the case. As a general example one could mention the directives. In many situations, when the national law fully transposes a directive, there may be no need to refer to the directive itself in a judicial decision, as references to national law suffice. However, it may be necessary to resort to the text of the directive and to the case law of the CJEU in case of incorrect or incomplete implementation of a directive, which may pop up in a specific situation.

Supreme Court decision of 25 May 2023 has, at first sight, little to do with EU law (KKO:2023:35).<sup>14</sup> A Finnish citizen had travelled by pleasure boat from Finland to Estonia and back during the same day. On his return, he was controlled by the border guard. He had a valid passport, but he did not have it with him on the trip. As a Finnish citizen, he could enter the country without a valid travel document, but the fact that he had left the country without such a document constituted a minor border offence. He was ordered to pay 15 daily fines for the offence, but as he was a rather wealthy person the amount of each daily fine was set as 6,350 EUR, resulting thus in 95,250 EUR in total. In the course of the proceedings, the defendant invoked that in this instance EU law was applicable as he had indeed exercised his right to free movement under EU law and that such a penalty is a disproportionate sanction in view of the principle of proportionality. The Supreme Court held, after requesting a preliminary ruling from the CJUE that traveling abroad without a valid travel document constituted a minor border offense.<sup>15</sup> However, given the right to free movement and the principle of proportionality, the Supreme Court found that imposing the standard fine would be excessively severe and disproportionate, adjusting the penalty accordingly. In this case, although originally there was apparently no EU law aspect at hand, that aspect unfolded during the court proceedings.

Supreme Administrative Court was called to consider the possible effect of EU law for its decision of 15 November 2016 (KHO:2016:180).<sup>16</sup> The case related to taxation of pensions. Finland had enacted a 6% additional tax on pension income which was above a certain level. A person whose pension income was 460,000 EUR in 2013 was charged with this additional tax. In the proceedings that followed, the person contested the legality of the additional tax on various grounds and finally, on his appeal to the Supreme Administrative Court, he invoked its potential incompatibility with the EU law and equal treatment directive 2000/78.<sup>17</sup> Following a preliminary ruling concerning also the applicability of the Charter of Fundamental Rights,<sup>18</sup> the Supreme Administrative Court gave a decision, following the ruling of the CJEU that the question of taxation of pension income in this case was not in the scope of EU law and no violation of EU law in that regard could be found. In this case, there was originally no hint as to the possible relevance of

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<sup>14</sup> Korkein oikeus / Högsta domstolen, 25 May 2023, ECLI:FI:KKO:2023:35 (<<https://www.finlex.fi/ecli?uri=ECLI:FI:KKO:2023:35&locale=fi>>).

<sup>15</sup> Case C-35/20 *A (Crossing of borders in a pleasure boat)* EU:C:2021:813.

<sup>16</sup> Korkein hallinto-oikeus / Högsta förvaltningsdomstolen, 15 November 2016, ECLI:FI:KHO:2016:180 (<<https://www.finlex.fi/fi/oikeuskaytanto/korkein-hallinto-oikeus/ennakkopaatokset/2016/180>>).

<sup>17</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16.

<sup>18</sup> Case C-122/15 *C* EU:C:2016:391.

EU law. In the course of the proceedings, that aspect unfolded and the question whether there is a relevant EU aspect was resolved after a request made to the court in Luxembourg.

### 3.3 LATENT (HIDDEN) EU CASES

The third and most challenging group to identify consists of '*latent (or hidden) EU cases*'. These are cases where, for example, the applicable domestic law is based so fully on the provisions of a directive that it may not be necessary to refer to an EU instrument or to the relevant EU case law. These may also be cases where the EU dimension is so minor that it is not necessary to refer to the relevant EU case law. In areas where regulation has been implemented in detail, for example by means of regulations or directives, the emergence of EU law in the application situation is hardly surprising. On the other hand, the application of more general provisions may be less precise, so that it may come as something of a surprise when applied, as in the case of the Treaties.

In its decision of 17 April 2025, the Supreme Court addressed an issue relating to the equality between women and men (KKO:2025:50).<sup>19</sup> In this case, an association had excluded the applicant, who had applied for an expert position, from the job application process before the job interviews and subsequently hired another person, who was of the opposite sex, for the position. The Supreme Court found that the recruitment process had given rise to a presumption of discrimination in working life within the meaning of relevant provision of the Act on Equality between Women and Men. However, it ruled that the association's actions were due to other acceptable factors than gender; the Supreme Court took the view that the applicant had been excluded because the salary the applicant had requested in his job application was clearly excessive in relation to the salary level for the position in question. In reading the published version of this decision, there seems to be no mention of any EU law instrument. However, the EU law aspect comes out clearly in a dissenting opinion, where the judge writing the opinion notes that the relevant provision of national law has contributed to the implementation of the Employment Equality Directive 2006/54<sup>20</sup> and discusses in some detail the relevant case law of the CJEU.

On May 30, 2016, the Supreme Administrative Court rendered a decision relating to trademarks (KHO:2016:82).<sup>21</sup> The ruling concerned the distinctiveness of a trademark. The case was adjudicated according to the provisions established by the national Trademark Act. There is an absence of overt references to EU legal instruments, such as the Trademark Directive, in the legal reasoning of the decision.<sup>22</sup> The potential relevance of EU law is only made evident through extensive references to the case law of the Court of Justice and the Court of First Instance.

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<sup>19</sup> Korkein oikeus / Högsta domstolen, 17 April 2025, ECLI:FI:KKO:2025:50 (<<https://www.finlex.fi/ecli?uri=ECLI:FI:KKO:2025:50&locale=fi>>).

<sup>20</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation [2006] OJ L204/23.

<sup>21</sup> Korkein hallinto-oikeus / Högsta förvaltningsdomstolen, 30 May 2016, ECLI:EU:FI:KHO:2016:82 (<<https://www.finlex.fi/fi/oikeuskaytanto/korkein-hallinto-oikeus/ennakkopaatokset/2016/82>>).

<sup>22</sup> Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks [2008] OJ L299/25.

## 4 CONCLUSION

Tracing national case law applying European Union law at Member State level is in many ways a challenge. At EU level, the national decisions are not available in one location, not at least with full coverage even if there are databases which present summaries of national case law in a sporadic manner.<sup>23</sup> At national level, as has been discussed for Finland, there is no direct way of accessing the national case law applying the EU law, as these cases are not indexed systematically either by the Courts themselves nor the easily available. Yet the national application is the essential other half of EU law, offering the judicial protection at the national level for the rights and obligations emanating from EU level.<sup>24</sup> The examples presented above may be useful in further identification of national cases. This is of particular significance for EU law research, as it helps lawyers in arguing the EU aspects of cases before national courts and may be of assistance to national judges in deciding new EU cases.<sup>25</sup>

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<sup>23</sup> See for example the database maintained by the EU Fundamental Rights Agency (<<https://fra.europa.eu/en/case-law-database>>) or the database of ACA-Europe (<<https://www.aca-europe.eu/index.php/en/dec-nat-en>>).

<sup>24</sup> The national application has been assessed at the European level in some works of comparative nature, see for example Pekka Aalto, Samuli Miettinen and Juha Raitio, 'Finland' in Botman M and Langer J (eds), *National Courts and the Enforcement of EU Law The Pivotal Role of National Courts in the EU Legal Order*. The XXIX FIDE Congress in the Hague (Eleven International Publishing 2020).

<sup>25</sup> The essential role of the national courts has been underlined by President Koen Lenaerts of the Court of Justice of the European Union, see for example an interview in Europa Felix podcast (April 25, 2023), "Unierecht is nationaal recht" (<<https://www.europafelix.eu/>>) accessed 1 February 2026 (working translation of the Dutch original): "The judiciary of the Union is not the Court of Justice of the European Union. It's the national courts. If you want to say, yes, but where is the Court of Justice, I would say: the invisible part of the iceberg carries the iceberg. The visible tip may be the Court of Justice and the General Court in Luxembourg, but that is not the essence. At the heart of the system are national courts – civil courts, commercial courts, criminal courts, tax courts, administrative judges, constitutional judges sometimes – who apply and enforce EU law. [...] The Court now receives a 600 preliminary ruling cases per year. And these are all rulings that raise a problem for the first time – by and large – and that is good. For this purpose, the system of references for a preliminary ruling was envisaged. However, if there are sufficient indications, the national courts, including the highest courts, must do their own work [...]. The real courts of the European Union are the national courts. We are a court with jurisdiction assigned to us, of which the preliminary ruling procedure is an important competence — not the only one, but an important one. But for the rest: all disputes between private parties, all disputes between, on the one hand, a private party and, on the other, a public authority of the Member States, fall within the exclusive jurisdiction of the national courts. Even where the substance is concerned with EU law. So that's something we must always bear in mind."

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