

## **Joint Cases C-188/10 & C-189/10 Melki and Abdeli [2010]**

**Facts:** Algerian nationals who were residing unlawfully in France were detained at the border. The claimants argued that the lawfulness of the check made on them was contrary to rights guaranteed by the French Constitution. The national court felt prevented from referring a question to the ECJ for a preliminary ruling if a priority question on constitutionality was referred the Constitutional Court. The decision whether it should submit the question depended on EU law, and so a reference was made to the ECJ.

**Held:** Member States could not prevent national courts from referring to the ECJ. National courts could always refer to the ECJ, whether or not the determination of unconstitutionality was subject to a prerequisite reference to the constitutional court. Having such a procedure was legal, as long as national courts could make a reference at all stages of proceedings, could always protect EU law, and could render invalid national laws contradicting EU law.