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Right to fair trial – Case Study I

Ms K., a third-country national, has held EU long-term resident status under Directive 2003/109/EC for several years in Member State X. She has been living and working there lawfully and has built strong social ties.

Following an internal security assessment, the national intelligence services classify Ms K. as a threat to national security, based on undisclosed information relating to her alleged contacts with a group under surveillance. On that basis, the immigration authority issues a decision withdrawing her EU long-term resident status, relying on national law implementing the Directive 2003/109/EC, which allows withdrawal on grounds of public policy or public security. It also simultaneously imposes a “security monitoring administrative fee” of 4 000 EUR, justified as covering “enhanced security screening costs” linked to her case.

Under national law:

- Ms K. may lodge an administrative appeal before a regional administrative court against both the withdrawal and the fee.
- The procedure is in writing only and highly technical, turning on the interpretation of the Long-Term Residents Directive and national implementing measures.
- The relevant legal-aid statute expressly excludes legal aid for appeals against such “security-related administrative fees” and status-withdrawal decisions, classifying them as public-law security measures rather than civil disputes or criminal proceedings. In comparison, legal aid is available in asylum procedures, detention/expulsion cases where personal liberty is at stake or classic civil and criminal proceedings.

Ms K. is a low-income worker, recently dismissed, with limited knowledge of the language of Member State X. She has no funds to pay a lawyer and no way to challenge the security assessment without professional help. She struggles to understand how the national security concept in national law interacts with Directive 2003/109/EC and with her factual situation.

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Directive 2003/109/EC

Article 9

Withdrawal or loss of status

(..)

3. Member States may provide that the long-term resident shall no longer be entitled to maintain his/her long-term resident status in cases where he/she constitutes a threat to public policy, in consideration of the seriousness of the offences he/she committed (..).

European Convention on Human Rights

Article 6

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Charter of Fundamental Rights of the European Union

Article 47

Right to an effective remedy and to a fair trial

1. *Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.*
2. *Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.*
3. *Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.*

Questions:

1. Does Article 47 of the Charter apply to the national procedural rules regarding the withdrawal of Ms.'s K EU long term resident status?

- a. Yes, the Charter is a catalogue of fundamental rights that, in principle, always applies, as is the case with the European Convention on Human Rights (ECHR).
- b. Yes, because these rules qualify as the implementation of Directive 2003/109/EC.
- c. No, because Article 9 of Directive 2003/109/EC clearly allows for the withdrawal of residence permit due to a threat to national security.
- d. No, this case concerns residence permits, and Article 47 of the Charter guarantees the right to effective judicial protection only for civil claims and in the context of a criminal prosecution.

2. Discuss, on the basis of the relevant provisions of the Charter, if the interpretation of Article 47 of the Charter must comply with the same standards as those fixed by the ECHR and the case law of the European Court of Human Rights. Would the answer be different if Ms. K would have been involved in a criminal litigation?

3. Discuss whether, in this EU-law immigration context, the blanket exclusion of legal aid is compatible with Article 47 CFR? Would the answer be different if Ms. K would have been involved in a criminal litigation?