



**ADDITIONAL SUBSTANTIVE
RIGHTS OF PARTICULAR
RELEVANCE FOR JUDICIAL
OFFICIALS AND EMPLOYEES
– ACCESS TO JUSTICE**

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TITLE VI OF THE CHARTER- JUSTICE

- ❑ Right to an effective remedy and to a fair trial:
Article 47
- ❑ Presumption of innocence and right of defence:
Article 48
- ❑ Principles of legality and proportionality of
criminal offences and penalties: Article 49
- ❑ Right not to be tried or punished twice in
criminal proceedings for the same criminal
offence: Article 50



ARTICLE 47

- ❑ Anyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to:
 - An effective remedy before a tribunal;
 - A fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law;
 - The possibility of being advised, defended and represented.



ARTICLE 47, paragraph 1

1. Right to an effective remedy

- ❑ It is based on Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.)
- ❑ More extensive protection – guarantees a right to an effective legal remedy before a tribunal
- ❑ Case Johnston, C-222/84, Judgement 15 May 1986, right to an effective legal remedy as a general principle of EU law



ARTICLE 47, paragraph 1, contd.

- ❑ Valid for all rights guaranteed by the law of the Union
- ❑ „According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. Article 47 applies to the institutions of the Union and of Member States when they are implementing Union law.”



ARTICLE 47, paragraph 2

2. Right 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.



ARTICLE 47, paragraph 2, contd.

- ❑ Corresponds to the right to a fair trial under Article 6, paragraph 1 of the ECHR:
- ❑ „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. Judgement shall be pronounced publicly but the press and **public may be excluded** from all or part of the trial in the interest 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 the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”



ARTICLE 47, paragraph 2, contd.

- ❑ Differences in comparison with Article 6, paragraph 1 of the ECHR:
 - Scope of application: is not limited to disputes pertaining to civil rights and obligations or any criminal charge;
 - Case ECtHR Micallef v Malta [GC], No. 17056/06
 - Does not contain exceptions from the principle of publicity
 - Everyone's right of being advised, defended and represented is not limited to criminal proceedings (ECHR, Article 6, paragraph 3 (c))



ARTICLE 47, paragraph 3

3. Right to legal aid

- „In accordance with case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy.” (Judgement of the ECtHR, Airey v Ireland, 6289/73, of 9 October 1979)
- „There is also a system of legal aid for cases before the Court of Justice of the European Union.”



Legal aid and ECtHR

- ❑ Is providing legal aid essential?
- It depends on:
 - The facts and circumstances of every case
 - The significance of the matter for the claimant
 - Complexity of the relevant law and proceedings
 - Capability of the claimant to represent him/herself on his/her own
 - Financial status of the claimant
 - Likelihood of success in the dispute
- ❑ Cases of the ECtHR: *Steel and Morris v UK*, 68416/01, § 61, 62, *Airey v Ireland*, 6289/73, §26



ARTICLE 47, CASES

- ❑ Kadi II (C-584/10 P), 18 July 2013
- ❑ ZZ (C-300/11), 4 June 2013
- ❑ Centre public d'action sociale d'Ottignies-Louvain-la-Neuve (C-562/13), 18 December 2014
- ❑ Sanchez Morcillo (C-169/14), 17 July 2014
- ❑ Csipai (C-472/11), 21 February 2013
- ❑ Mahadi (C-146/14 PPU), 5 June 2014



KADI II (C-584/10)

- „...fundamental right, which is affirmed in Article 47 of the Charter, requires that the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him is based either by reading the decision itself or by requesting and obtaining disclosure of those reasons, without prejudice to the power of the court having jurisdiction to require the authority concerned to disclose that information, so as to make it possible for him to defend his rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in his applying to the court having jurisdiction, and in order to



ARTICLE 48

❑ Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of defence of anyone who has been charged shall be guaranteed.



ARTICLE 48, contd.

- ❑ Corresponds to Article 6, paragraphs 2 and 3 of the ECHR
- ❑ Same meaning and scope of application as the right guaranteed by the ECHR (Article 52, paragraph 3 of the Charter)
- ❑ The rights under Article 6 (paragraph 3) of the ECHR + interpretation of the ECtHR: minimum rights to be respected
 - What are these rights?
 - Article 6 (paragraph 3) of the ECHR contains no explicit guarantee of the right to protection against self-incrimination, but that right has been established through case law of the ECtHR (*Funke v France*, No. 10828/84, §44)



ARTICLE 48, CASES

- ❑ Radu (C-396/11), 29 January 2013
- ❑ Melloni (C-399/11), 26 February 2013
- ❑ Ahmed Abdelaziz Ezz (T-256/11), 27 February 2014



„...the two systems, the ECHR and the EU, mutually and for the mutual benefit have had a positive impact on each other through their courts, which throughout the years have shown their openness to the development of human rights. Through mutual respect, they have established a genuinely harmonious relationship indispensable to achieve coherence in the protection of human rights.” (Advocate General Francis G. Jacobs).



THANK YOU FOR YOUR
ATTENTION!

