

EU law procedural rights standards in practice, limits and balancing

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Outline of presentation

- ▶ Focus on practical application: limits and balancing (article 52 (1) of the Charter)
- ▶ Interaction with other provisions of the Charter: Articles 41 and 48
- ▶ Specific examples on obstacles
 - ▶ fees, procedural deadlines
- ▶ Practical aspects
 - ▶ Right to be defended and represented
 - ▶ Service, Information and language
 - ▶ Victims' rights
- ▶ Caveats: only some illustrative examples, from the perspective of the application of article 47 to the Member States (mostly preliminary rulings and infringement actions). Of course, only my personal opinion.

Procedural provisions of the Charter : scope

- ▶ Article 41 – administration
 - ▶ Applicable to EU Institutions concern covered by **general principle** of good administration
 - ▶ Specific to administration (adverse decisions?); enforceable through its components which partly overlap with content of 'rights of the defence'
 - ▶ Discussion, Opinion AG in *Ispas* – C-298/16
- ▶ Article 47 – Access to court and Fair Trial
 - ▶ Judicial proceedings of all kinds
 - ▶ EU and MS (with regard to EU rights?) > discussion, *Berlioz Investment Fund*, C-682/15, Article 48 – Rights of the defence
 - ▶ Criminal Justice, content > ECHR 6(2) and (3)
 - ▶ Development through secondary EU law

Article 41 of the Charter: Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 48 of the Charter: presumption of innocence and rights of defence

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

Article 6 CEDH Right to a fair trial

- 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.

Article 47 right to an effective remedy and fair trial

- ▶ 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.
- ▶ 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**.
- ▶ **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.

Article 6 CEDH 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.

Examples of obstacles to the right of access to court

- ▶ Point of departure: principle of institutional and procedural autonomy of the Member States (C-33/76, *Rewe*)
- ▶ Pre-Charter Case-law : focus on the principles of effectiveness and equivalence.
 - ▶ Effectiveness - Impossible or excessively difficult
 - ▶ 222/84- *Johnston* – effective judicial remedy
 - ▶ C-213/89 *Factortame*, interim relief
 - ▶ 199/82 *San Giorgio* – remedies >repayment of illegal tax levies
 - ▶ C-6/90 and 9/90 *Francovich*- Damages
 - ▶ C-312/93 *Peterbroeck* and C-430/93 *Van Schijndel*
 - ▶ C-432/05 *Unibet* – availability of legal remedies

Examples of obstacles to the right of access to court

- ▶ Post-Charter case-law
 - ▶ Progressive evolution of framework of reference: from procedural autonomy > effectiveness to right to effective judicial protection (47) and admissible limitations (52(1))
- ▶ Examples:
 - ▶ Right to a remedy: *Aziz*; C-49/14 *Finanmadrid*
 - ▶ Res judicata: C- 2/08 *Fallimento Olimpiaclub*; C-69/14 *Târșia*
 - ▶ Jurisdictional considerations: C-317/18, *Alassini*; C-93/12 *Agrokonsulting*
 - ▶ Ius standi: C-510/13 *E.ON Földgáz Trade Zrt*; C-243/15 *Lesoochránárske zoskupenie VLK*
 - ▶ remedy (powers of courts and application by administration): C-556/17 *Torubarov*; *Alheto* C-585/16
 - ▶ Suspensive effect of appeals (asylum): C-181/16 *Gnadi*

Article 47 of the Charter and limitations

- ▶ Limitations / Balancing
 - ▶ With other legal principles:
 - ▶ Legal certainty (see above, case law on res judicata, or below, case law on time limitations)
 - ▶ Good administration of Justice; judicial economy; procedural considerations: *Trade Agency C-619/10; C-73/16 Puškár ; C-685/15 Online Games*
 - ▶ With other fundamental rights
 - ▶ Liberty and security: *C-752/18 Deutsche Umwelthilfe*
 - ▶ Other interests, values
 - ▶ Public safety: *C-300/11 – ZZ*
 - ▶ Financial interests of the Union – (See saga *Taricco; M.A.S; Kolev; Dzivev*)

Article 52 of the Charter Scope and interpretation of rights and principles

- ▶ 1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be **provided for by law** and respect the **essence** of those rights and freedoms. Subject to the principle of **proportionality**, limitations may be made only if they are **necessary** and **genuinely** meet objectives of general interest recognised by the Union or the need to protect the **rights and freedoms of others**.
- ▶ 2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within **the limits defined by those Treaties**.
- ▶ 3. In so far as this Charter contains rights which correspond to rights guaranteed by the **Convention for the Protection of Human Rights and Fundamental Freedoms**, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
- ▶ 4. In so far as this Charter recognises fundamental rights as they result from **the constitutional traditions** common to the Member States, those rights shall be interpreted in harmony with those traditions.
- ▶ ...

Time limitations

- ▶ Pre Charter case law:
 - ▶ C-208/90 *Emmot* // C-338/91 *Steenhorst-Neerings*
 - ▶ C- 349/08 *Sopropé*
- ▶ Post – Charter examples:
 - ▶ C-429/15 *Danqua*; C-651/19 *Commissaire général aux réfugiés et aux apatrides* (Asylum)
 - ▶ C-280/18 *Flausch and Others* (environmental law)
 - ▶ C-637/17 *Cogeco Communications* (competition law)
 - ▶ C-676/17 *Călin* (tax law)

Legal fees / legal aid

- ▶ C- 61/14 *Orizzonte salute* (in principles, legal fees contribute to the proper functioning of the Justice system).
- ▶ C-205/15 *Toma* (exception of public authorities from certain legal costs- equality of arms)
- ▶ C-470/16 - *North East Pylon Pressure Campaign and Sheehy* (rule of not prohibitively expensive procedure – Aarhus)
- ▶ C-279/09 *DEB* and C-156/12 *GREP* (Access of legal persons to legal aid)

- ▶ **The Legal Aid Directive 2016/1919**

Other practical aspects: criminal procedure

- ▶ Right to be advised, defended and represented
 - ▶ Generally under Article 47
 - ▶ Directive 2013/48 on the right of access to a lawyer in criminal proceedings
 - ▶ Importance of fundamental rights conform interpretation of directives : C-659/18 WV (right to a lawyer in absentia)
 - ▶ Joint interpretation > C-467/18 - *Rayonna prokuratura Lom*
- ▶ Service, Information and language
 - ▶ Specific standards in EU Criminal law
 - ▶ Directive 2010/64 Right to interpretation and translation
 - ▶ Directive 2012/13 Right to information > see discussion on interpretation in accordance with the Charter in Opinion of AG C-646/17 *Moro*
 - ▶ Directive 2016/343 on the presumption of innocence and the right to be present at trial (in absence of specific guidance > art 48 + ECHR) C-377/18 - *AH and Others*

Victims' rights

- ▶ Importance of secondary law
- ▶ Access to remedies:
 - ▶ C-186/87 *Cowan*
 - ▶ Directive 2004/80 - Right to Compensation... of Cross – border ? Victims
 - ▶ C-601/14 *Commission / Italy*
 - ▶ C-129/19 *Presidenza del Consiglio dei Ministri* (Opinion of AG and relevance of right to dignity)
- ▶ Procedural standards
 - ▶ Framework Decision 2001/220 > C-105/03 *Pupino*; C- 507/19 X
 - ▶ The Victims' rights Directive 2012/29
 - ▶ Right to effective remedy of victims
 - ▶ Balance with rights of the defence: C-38/18 *Gambino and Hyka*



Thanks for your
attention !