



Right to an effective remedy under Art. 47 CFR

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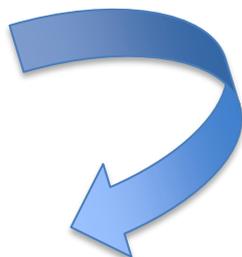


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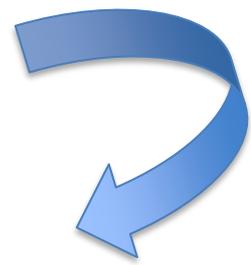


An X-ray of Article 47

Effective remedy for breaches of EU-law rights (para. 1)



Features of fair proceedings (para. 2)



Legal aid (para.3)



Scope of application: the shortcut

The controlling element is **the existence of EU-derived rights** with direct effect (wider than ECHR)



- Don't think too hard about who can invoke it (everyone!)
- Don't think too hard about who can enforce it (every EU court and domestic court handling EU-law)



Warning: Article 47 CFR's two functions

Ensure that **EU courts** work fairly, that **EU acts** are reviewable.

But also:

That **national courts** work fairly, that **national acts** are reviewable (if EU law is at stake)

Remedy against what?

Article 47 CFR provides a remedy against:

- A MS's mishandling of EU law rights (against a standard found in EU law at large), or
- Measures of EU institutions





Access to EU courts?

- Standing in annulment very restrictive (Art. 263.4 TFEU), to challenge EU measures in EU courts.
- All-inclusive possibility to obtain annulment through the preliminary reference system of Art. 267 TFEU.
 - A complete system?



Remedies against EU decisions?

Entire issue about fairness of antitrust proceedings before the Commission → appeal before GC, then CJEU

Trickier with sanctions required by the UN (for supporting terrorism).

Ultimately, the EU said that they must be reviewable.





Remedies against MS decisions*

Right to submit any MS measure to full and fair judicial review. If it is court decisions, move to check of due process. If it is administrative, right to judicial review.

Of course, most domestic systems already includes a system of judicial review. For starters, ***principle of equivalence***.

* An EU-derived right must be at stake

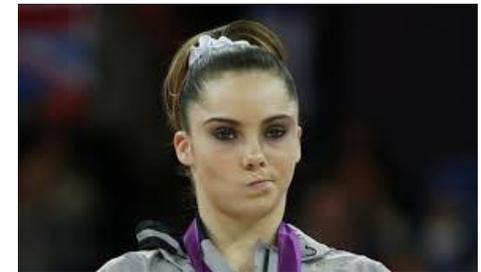




Beyond autonomy and equivalence

“EU law does not, in principle, require MS to establish before their national courts, in order to ensure the safeguarding of the rights which individuals derive from EU law, remedies other than those established by national law”
→ principle of equivalence.

Not enough!



After all, Art. 47 CFR applies primarily to EU institutions (so equivalence is not the starting point). In certain cases, **effectiveness** might be secured only *expanding* the domestic remedies.



Zoom-in: going beyond equivalence

Example: lack of judicial review for asylum board decision that modifies previous decision.

If individual lacks an effective remedy against a possible infringement of their EU-derived rights
→ the domestic court must grant a remedy, even if domestic law does not provide for it (*existence* of the remedy)

→ the appeal must have suspensive effects (*effectiveness* of the remedy)



What is the EU-based right?

Right to have application admitted. Turning on Art. 33(2)(d) of Directive 32/2013.

What is a “new element”?

2. Member States may consider an application for international protection as **inadmissible** only if: (d) the application is a subsequent application, where no **new elements or findings** relating to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU have arisen or have been presented by the applicant

MS courts required to affirm competence

143 ... if it is apparent from the overall scheme of the national legal system in question that no legal remedy exists that would make it possible to ensure, even indirectly, respect for the rights that individuals derive from EU law.

144 It is therefore for the national courts to declare that they have jurisdiction to determine the action brought by the person concerned in order to defend the rights guaranteed to him by EU law if the domestic procedural rules do not provide for such an action in such a case. [FMZ, FNZ](#)





Remedy must be effective

Appeal must have suspensive effects

Appeal is not precluded by *res judicata*

Compliance with other EU-based rights:
if *non refoulement* was not examined,
remedy was not effective.

→ Re-examination possible even without
new facts.



Effectiveness: procedural standards

Time-limits are ok, if reasonable (C-583/11 *Inuit*)

Fair length of procedure (C-238/12 P, *FLSmidth*) → claim against GC itself!

Right to seek interim protection (C-278/13 P(R), *Pilkington Group*)



Procedural fairness

Equality of arms (always dubious with regard to Commission proceedings and Advocate General's opinions)

Fair and public hearings

Right to defence (default judgments and summons by public notice)

Right to know reasons (i.e., duty to give reasons)



Zoom-in: duty to provide reasons

...Article 47 of the Charter also requires that, as part of the review of the lawfulness of the grounds which are the basis of the decision to list or to maintain the listing of a given person ... the Courts of the European Union are to ensure that that decision, which affects that person individually, is taken on a sufficiently solid factual basis. ... judicial review ... must concern whether those reasons, or, at the very least, one of those reasons, deemed sufficient in itself to support that decision, is substantiated. [C-584/10 P Kadi, GC, 2013](#)



Legal aid – a sketch

Both with respect to court and legal fees.

Not just natural persons (C-279/09, DEB), obvious consequence of it being a safeguard for EU-derived rights.

A right conditioned on effectiveness requirements: refusal to provide legal aid might be justified because they do not harm excessively the individual's right to defence.





Zoom-in: legal aid reasoning

Need to check: 'the subject-matter of the litigation; whether the applicant has a reasonable prospect of success; the importance of what is at stake for the applicant in the proceedings; the complexity of the applicable law and procedure; and the applicant's capacity to represent himself effectively. In order to assess the proportionality, the national court may also take account of the amount of the costs of the proceedings in respect of which advance payment must be made and whether or not those costs might represent an insurmountable obstacle to access to the courts'. [DEB](#)





Thanks – questions?

