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# Limitations of Art 47 CFREU

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# Due Process

- Article 47 of the Charter of Fundamental Rights of the European Union lays down the **'right to an effective remedy and to a 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***.

# Normative Roots of Art 47

- Joined Cases C-317/08 to C-320/08 *Alassini*

Secondly, it should be borne in mind that **the principle of effective judicial protection is a general principle of EU law** stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the ECHR and which has also **been reaffirmed by Article 47** of the Charter of Fundamental Rights of the European Union (see *Mono Car Styling*, paragraph 47 and the case-law cited).

# Effective Judicial Protection

- Case 222/84 Johnston

*„...it must be borne in mind first of all that article 6 of the Directive requires Member States to introduce into their internal legal systems such measures as are needed to enable all persons who consider themselves wronged by discrimination ' to pursue their claims by judicial process'. It follows from that provision that the **Member States must take measures which are sufficiently effective to achieve the aim of the Directive and that they must ensure that the rights thus conferred may be effectively relied upon before the national courts by the persons concerned .***

*The requirement of judicial control stipulated by that article **reflects a general principle of law which underlies the constitutional traditions common to the member states.** That principle is also laid down in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 as the European Parliament , Council and Commission recognized in their joint declaration of 5 April 1977 (Official Journal c 103 , p . 1 ) and as the Court has recognized in its decisions, the principles on which that convention is based must be taken into consideration in Community law.*

*By virtue of article 6 of Directive 76/207 , interpreted in the light of the general principle stated above, all persons have the right to obtain an effective remedy in a competent court against measures which they consider to be contrary to the principle of equal treatment for men and women laid down in the directive. It is for the Member States to ensure effective judicial control as regards compliance with the applicable provisions of community law and of national legislation intended to give effect to the rights for which the directive provides .*

*The answer to this part of the sixth question put by the Industrial tribunal must therefore be that **the principle of effective judicial control** laid down in article 6 of council Directive no 76/207 of 9 February 1976 does not allow a certificate issued by a national authority stating that the conditions for derogating from the principle of equal treatment for men and women for the purpose of protecting public safety are satisfied to be treated as conclusive evidence so as to exclude the exercise of any power of review by the courts .”*

# EU Requirement of Minimal Effectiveness of Procedural Instruments

- 33/76 REWE-ZENTRAL

„The prohibition laid down in Article 13 of the Treaty ...have a **direct effect and confer on citizens rights** which the national courts are required to protect .

Applying ***the principle of cooperation*** laid down in article 5 of the Treaty, **it is the national courts** which are **entrusted with ensuring the legal protection** which citizens derive from the direct effect of the provisions of Community law.

Accordingly, in the absence of Community rules on this subject, **it is for the domestic legal system of each Member State to designate the courts having jurisdiction and to determine the procedural conditions** governing actions at law intended to ensure the protection of the rights which citizens have from the direct effect of Community law, it being understood that such conditions **cannot be less favourable** than those relating to similar actions of a domestic nature...

In the absence of such measures of harmonization the right conferred by Community law must be exercised before the national courts in accordance with the conditions laid down by national rules.

The position would be different only if the conditions and time-limits ***made it impossible in practice to exercise the rights*** which the national courts are obliged to protect .

This is not the case ***where reasonable*** periods of limitation of actions are fixed .

The laying down of such time-limits with regard to actions of a fiscal nature is an application of the fundamental principle of legal certainty protecting both the tax-payer and the administration concerned .”

# General Limitations on Art 47

- Art 51

The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for **the principle of subsidiarity** and to the Member States **only when they are implementing Union law**. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and *respecting the limits of the powers of the Union* as conferred on it in the Treaties.

The Charter **does not extend the field of application of Union law** beyond the powers of the Union **or establish any new power or task** for the Union, or modify powers and tasks as defined in the Treaties.

- Art 52

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.

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.

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.

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.

# Application of the Principle

- ***effective judicial protection*** to be provided
  - when national courts interpret national law, so as to provide effective remedies and procedures when dealing with rights under Union
    - Art 267 TFEU mechanism
  - when the CJEU interprets Treaty provisions as applied by EU bodies;
  - when the CJEU reviews the validity of secondary law as implemented by Member States, eventually entailing also disapplication;
- the principle of effective judicial protection has functioned as an „umbrella principle”
  - it comprises various elements, which themselves constitute rights or principles of their own that have been often applied in a somewhat flexible manner (sometimes as self-standing principles, sometimes in connection with the principle of effective judicial protection or as a part of it)
  - those elements are reflected in Art 41, Art 47 and Art 48 CFREU

# Impossible or Excessively Difficult

- C-312/93 *Peterbroeck*

For the purposes of applying those principles, each case which raises the question whether a national procedural provision renders application of Community law ***impossible or excessively difficult*** must be ***analysed*** by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national instances.

In the light of that analysis the basic principles of the domestic judicial system, such as protection of the *rights of the defence*, the principle of *legal certainty* and the *proper conduct of procedure*, must, where appropriate, be taken into consideration.

# Example of Early Migration

- C-93/12 Agroconsulting

As regards, next, the principle of effectiveness, it must be recalled that, from the point of view of the analysis required by the case-law cited at paragraph 38 above, the question whether a national procedural provision renders the exercise of an individual's rights under the European Union legal order *impossible in practice or excessively difficult* must be assessed taking into consideration, as appropriate, the principles which lie at the basis of the national legal system concerned, such as the *protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings* (see inter alia, to that effect, *Peterbroeck*, paragraph 14, and *Pontin*, paragraph 47).

the case in the main proceedings, the referring court must, as regards the concerns set out at paragraphs 30 and 31 above, take account of the following factors.

...

So far as concerns, lastly, **Article 47** of the Charter, it is apparent from the Court's case-law that that provision **constitutes a reaffirmation of the principle of effective judicial protection**, a general principle of European Union law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the European Convention ... (see to that effect, inter alia, Case 222/84 *Johnston* [1986] ECR 1651, paragraph 18; Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 37; and Case C-334/12 RX-II *Arango Jaramillo and Others v EIB* [2013] ECR, paragraph 40).

In the present case, it is sufficient to observe in this connection that, taking account, inter alia, of the considerations expressed in paragraphs 50 to 58 of this judgment and in the light of the information available to the Court in these proceedings, it does not appear that an individual in a position such as that of Agroconsulting is deprived of an effective remedy before a court with a view to defending rights derived from European Union law.

In the light of the foregoing, the answer to the questions referred is that European Union law, in particular **the principles of equivalence and effectiveness and Article 47 of the Charter, does not preclude a national rule** of jurisdiction such as that in Article 133(1) of the APK, which results in conferring on a single court all disputes relating to decisions of a national authority responsible for the payment of agricultural aid under the European Union common agricultural policy, provided that actions intended to ensure the safeguarding of the rights which individuals derive from European Union law are not conducted in less advantageous conditions than those provided for in respect of actions intended to protect the rights derived from any aid schemes for farmers established under national law, and that jurisdiction **rule does not cause individuals procedural problems in terms, inter alia, of the duration of the proceedings**, such as to render the exercise of the rights derived from European Union law excessively difficult, which it is for the referring court to ascertain.

# Doctrinal Changes: From Principle to Right; From Reasonableness to Proportionality

- C-320/08 Alassini

60 In those circumstances, it must be held that the national legislation at issue in the present case **complies with the principle of effectiveness** in so far as electronic means is not the only means by which the settlement procedure may be accessed and in so far as interim measures are possible in exceptional cases where the urgency of the situation so requires.

61 **Secondly, it should be borne in mind that the principle of effective judicial protection is a general principle of EU law** stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the ECHR and **which has also been reaffirmed by Article 47 of the Charter of Fundamental Rights** of the European Union (see *Mono Car Styling*, paragraph 47 and the case-law cited).

62 In that regard, it is common ground in the cases before the referring court that, by making the admissibility of legal proceedings concerning electronic communications services conditional upon the implementation of a mandatory attempt at settlement, the national legislation introduces an additional step for access to the courts. **That condition might prejudice implementation of the principle of effective judicial protection.**

63 Nevertheless, it is settled case-law that **fundamental rights do not constitute unfettered prerogatives and may be restricted, provided that the restrictions in fact correspond to objectives of general interest pursued by the measure in question and that they do not involve, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed** (see, to that effect, Case C-28/05 *Doktor and Others* [2006] ECR I-5431, paragraph 75 and the case-law cited, and the judgment of the ECHR in *Fogarty v United Kingdom*, no. 37112/97, §33, ECHR 2001-XI (extracts)).

64 However, as the Italian Government observed at the hearing, it must first be noted that the aim of the national provisions at issue is the quicker and less expensive settlement of disputes relating to electronic communications and a lightening of the burden on the court system, and they thus **pursue legitimate objectives in the general interest.**

65 Secondly, the imposition of an out-of-court settlement procedure such as that provided for under the national legislation at issue, **does not seem** – in the light of the detailed rules for the operation of that procedure, referred to in paragraphs 54 to 57 of this judgment – **disproportionate in relation to the objectives pursued.** In the first place, as the Advocate General stated in point 47 of her Opinion, **no less restrictive alternative to the implementation of a mandatory procedure exists**, since the introduction of an out-of-court settlement procedure which is merely optional is not as efficient a means of achieving those objectives. In the second place, it is **not evident that any disadvantages caused by the mandatory nature of the out-of-court settlement procedure are disproportionate to those objectives.**

66 In the light of the foregoing, it must be held that the national procedure at issue in the main proceedings also complies with the principle of effective judicial protection, subject to the conditions referred to in paragraphs 58 and 59 of this judgment.

# Fundamental Right and/or Fundamental Principle

- The Principle aspect of the scrutiny facilitates exploration of practical implications/scope of the right

At paragraph 59 of the DEB judgment, the Court of Justice decided, taking into account the case law of the European Court of Human Rights, ***that the principle of effective judicial protection enshrined in Article 47 of the Charter is to be interpreted*** as meaning that its assertion by legal persons is not excluded and that the application aid granted to this principle, among others may include exemption from payment of advance court costs and / or fees for the assistance of a lawyer.

# Two Lines of Restrictions

- Restrictions (for analytical purposes) related to
  - Art 47 guaranteeing fundamental right
  - Art 47 reaffirming fundamental principle of EU law

# Restriction of Art 47 as Fundamental Right

- C-156/12 GREP

However, the Court found that fundamental rights, such as respect for the rights of the defense, ***are not absolute rights but may be subject to restrictions. However, these must actually correspond to objectives of the general interest pursued by the measure in question and, in view of the purpose pursued, must not constitute an obvious and disproportionate impairment of the rights guaranteed in this way*** (judgment of April 2, 2009, Gambazzi, C. -394/07, ECR 2009 ECR I - 2563, paragraph 29).

- See also C-317-320/08 *Alassini*, C-28/05 *Dokter*, C-619/10 *Trade Agency*, C-418/11 *Texdata*

# What about Art 52(1)

- Art 52 (1) provides general definition of acceptable restrictions of fundamental rights and as such comprises a number of elements:
  - the limitation must be provided **by law**;
  - it must respect **the essence** of the right or freedom at stake
    - is restriction violating the essence of the right of such character that it can be considered “obvious”?;
  - it must be justified by (**legitimate aim**)
    - an objective of general interest recognized by the Union
    - the need to protect the rights and freedoms of others;
  - the principle of **proportionality** has to be respected
    - Is this different level of scrutiny from “*an obvious and disproportionate impairment*”?

# Element 1: Provided by Law

- C-562/12 **Eesti-Läti programmi 2007-2013 Seirekomitee,**

67 The first paragraph of Article 47 of the Charter provides that everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article.

68 To ensure that the right to an effective remedy within the EU is upheld, the second subparagraph of Article 19(1) TEU requires the Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law.

69 In a case such as that in the main proceedings, the rejection of an application for aid by the Seirekomitee means that the applicant is definitively excluded from the procedure allocating the aid cofinanced by the EU, without any decision being communicated to it subsequently.

70 Furthermore, it is apparent from the second sentence of the first subparagraph of Chapter 6.6 of the programme manual that the decisions of the Seirekomitee are not appealable. It is therefore not possible for an applicant whose application for aid has been rejected to contest that rejection decision.

71 In those circumstances, the lack of any remedy against such a rejection decision deprives the applicant of its right to an effective remedy, in breach of Article 47 of the Charter.

72 It must be added that Article 52(1) of the Charter accepts that limitations may be made on the exercise of the rights and freedoms recognised by the Charter, as long as the limitations are provided for by law, respect the essence of those rights and freedoms and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the EU or the need to protect the rights and freedoms of others.

73 ***In any event, the lack of remedy against a decision rejecting an application for aid, such as that at issue in the main proceedings, was provided for by the Seirekomitee and not by law.***

74 Consequently, it must be found that, ***in so far as it provides that a decision of the Seirekomitee rejecting an application to aid cannot be subject to an appeal, the programme manual does not comply with the principle of effective judicial protection*** laid down in the first paragraph of Article 47 of the Charter.

75 Furthermore, it must be borne in mind that the requirement for judicial review of any decision of a national authority constitutes a general principle of EU law. Pursuant to that principle, it is for the national courts to rule on the lawfulness of a disputed national measure and to regard an action brought for that purpose as admissible even if the domestic rules of procedure do not provide for this in such a case (see, to that effect, judgment in *Oleificio Borelli v Commission*, EU:C:1992:491, paragraphs 13 and 14).

# Element 2: Essence of Effective Judicial Protection

- C-279/09 DEB

In the light of all of the foregoing, the answer to the question referred must be that the principle of effective judicial protection, as enshrined in Article 47 of the Charter, must be interpreted as meaning that it is not impossible for legal persons to rely on that principle and that aid granted pursuant to that principle may cover, inter alia, dispensation from advance payment of the costs of proceedings and/or the assistance of a lawyer.

In that connection, **it is for the national court to ascertain whether the conditions for granting legal aid constitute a limitation on the right of access to the courts which undermines the very core of that right**; whether they pursue a legitimate aim; and whether there is a reasonable relationship of proportionality between the means employed and the legitimate aim which it is sought to achieve.

In making that assessment, the national court ***must take into consideration 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.

- C-314/13 Peftiev

As regards the Lithuanian Government's argument that the respondents in the main proceedings could obtain legal aid as provided for under national law in order to obtain legal representation, suffice it to note that, ***through Article 3(1)(b) of Regulation No 765/2006, the European Union legislature introduced a coherent system in order to ensure observance of the rights guaranteed by Article 47 of the Charter***, irrespective of any freezing of funds. ***When a person included in the list in Annex I to that regulation must have recourse to necessary legal services, it cannot be that that person must be regarded as destitute due to that freezing of funds; rather, that person must be able to apply to have certain funds or economic resources released***, provided that the conditions set out in that provision are satisfied.

**The very essence of Article 3(1)(b) precludes the competent national authority from refusing to authorise a release of funds on the ground that such a person may have recourse to legal aid.**

As regards the criteria to be taken into consideration by the competent national authority when deciding on a request for a derogation, Article 3(1)(b) of Regulation No 765/2006 sets out limitations on the use of funds: they must be intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services.

# Element 2: The Essence (often implicit)

- C-300/11 ZZ

„As regards judicial proceedings, the Court has already held that, having regard to the adversarial principle that forms part of the rights of the defence, which are referred to in Article 47 of the Charter, the parties to a case must have the right to examine all the documents or observations submitted to the court for the purpose of influencing its decision, and to comment on them (Case C-450/06 *Varec* [2008] ECR I-581, paragraph 45; Case C-89/08 P *Commission v Ireland and Others* [2009] ECR I-11245, paragraph 52; and Case C-472/11 *Banif Plus Bank* [2013] ECR, paragraph 30; see also, as regards Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, the judgment of the European Court of Human Rights in *Ruiz-Mateos v. Spain*, 23 June 1993, § 63, Series A no. 262).

The fundamental right to an effective legal remedy would be infringed **if a judicial decision were founded on facts and documents which the parties themselves, or one of them, have not had an opportunity to examine and on which they have therefore been unable to state their views** (*Commission v Ireland and Others*, paragraph 52 and the case-law cited).

57 However, if, in exceptional cases, a national authority opposes precise and full disclosure to the person concerned of the grounds which constitute the basis of a decision taken under Article 27 of Directive 2004/38, by invoking reasons of State security, the court with jurisdiction in the Member State concerned must have at its disposal and apply techniques and rules of procedural law which accommodate, on the one hand, legitimate State security considerations regarding the nature and sources of the information taken into account in the adoption of such a decision and, on the other hand, the need to ensure sufficient compliance with the person's procedural rights, such as the right to be heard and the adversarial principle (see, by analogy, *Kadi and Al Barakaat International Foundation v Council and Commission*, paragraph 344).

58 To that end, the Member States are required, first, to **provide for effective judicial review both of the existence and validity of the reasons invoked by the national authority** with regard to State security and of the legality of the decision taken under Article 27 of Directive 2004/38 and, second, to prescribe techniques and rules relating to that review, as referred to in the preceding paragraph of the present judgment...

In this connection, the national court with jurisdiction must carry out an independent examination of all the matters of law and fact relied upon by the competent national authority and it must determine, in accordance with the national procedural rules, whether State security stands in the way of such disclosure...

On the other hand, *if it turns out that State security does stand in the way of disclosure* of the grounds to the person concerned, judicial review, as provided for in Article 31(1) of Directive 2004/38, of the legality of a decision taken under Article 27 thereof must, having regard to what has been stated in paragraphs 51, 52 and 57 of the present judgment, be carried out in a procedure which strikes an appropriate balance between the requirements flowing from State security and the requirements of the right to effective judicial protection whilst limiting any interference with the exercise of that right to that which is strictly necessary.

In this connection, first, in the light of the need to comply with Article 47 of the Charter, that procedure must ensure, to the greatest possible extent, that the adversarial principle is complied with, in order to enable the person concerned to contest the grounds on which the decision in question is based and to make submissions on the evidence relating to the decision and, therefore, to put forward an effective defence. In particular, **the person concerned must be informed, in any event, of the essence of the grounds on which a decision refusing entry taken under Article 27 of Directive 2004/38 is based, as the necessary protection of State security cannot have the effect of denying the person concerned his right to be heard and, therefore, of rendering his right of redress as provided for in Article 31 of that directive ineffective.**"

## Element 2: The Essence (sometimes explicit)

- Case C-216/18 PPU Minister for Justice and Equality (Deficiencies in the system of justice)
  - „...the requirement of judicial independence forms part of the essence of the fundamental right to a fair trial, a right which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded.”
- In C-362/14 *Schrems*, the CJEU considered that legislation not providing for any possibility for an individual to pursue legal remedies in order to have access to personal data relating to him, or to obtain the rectification or erasure of such data, did not respect the essence of the right to an effective remedy and to a fair trial, as enshrined in Article 47 of the Charter.

# Element 3: Grounds of General Interest

- Examples from the caselaw:
  - established Rewe/Peterbroock principles still prevail – „the rights of the defence, the principle of legal certainty and the proper conduct of procedure”
    - time-limits: C-470/99, Universale-Bau AG; C-500/16, Carterpillar Financial Services; C-637/17, Cogeo Communications; C-676/17, Călin; C-280/18, Alain Flausch
    - res-judicata/duble jeopardy: C-119/05, Lucchini; C-2/08, Fallimento Olimpclub; C-213/13, Pizzarotti; C-64/14, Târsia
    - ius standi rules: C-510/13, E.ON FoldgazTrade
  - considerations pertaining to the security of the EU or of its Member States
    - Joined Cases C-584/10 P, C-593/10 P and C-595/10 P Kadi II; C-300/11 ZZ;
  - the existence of swift, effective and less costly dispute settlement
    - Joined Cases C-317-320/08 Alassini; C-619/10 Trade Agency
  - protection of health and life
    - procedural limitations due to COVID-19
  - autonomy of religious organisations („organization’s ethos”)
    - C-414/16 Egenberger

# Element 4: Proportionality

- Different Aims – Different Types of Scrutiny
  - difference in the review of a limitation of a fundamental right for reasons of
    - an objective of general interest
      - the test would seem a traditional one, i.e. in particular a strict test of proportionality
    - to protect the rights and freedoms of others
      - the need to reconcile the requirements of the protection of the different rights
    - C-450/06 Varec

*“On the contrary, that right of access must be balanced against the right of other economic operators to the protection of their confidential information and their business secrets.*

*The principle of the protection of confidential information and of business secrets must be observed in such a way as to reconcile it with the requirements of effective legal protection and the rights of defence of the parties to the dispute (see, by analogy, Case C-438/04 Mobistar [2006] ECR I-6675, paragraph 40) and, in the case of judicial review or a review by another body which is a court or tribunal within the meaning of Article 234 EC, in such a way as to ensure that the proceedings as a whole accord with the right to a fair trial.*

*To that end, the body responsible for the review must necessarily be able to have at its disposal the information required in order to decide in full knowledge of the facts, including confidential information and business secrets (see, by analogy, Mobistar, paragraph 40).”*

# Element 4: (de facto) Balancing

- C-752/18 Deutsche Umwelthilfe eV

„...where it is unable to interpret national law in compliance with the requirements of EU law, the national court, hearing a case within its jurisdiction, has, as an organ of a Member State, the obligation to disapply any provision of national law which is contrary to a provision of EU law with direct effect in the case pending before it (judgments of 9 March 1978, Simmenthal, 106/77, EU:C:1978:49, paragraph 21, and of 24 June 2019, Popławski, C-573/17, EU:C:2019:530, paragraphs 58 and 61). Nevertheless, that ***case-law of the Court cannot be understood as meaning that the principle of effectiveness of EU law and observance of the right, guaranteed by the first paragraph of Article 47 of the Charter, to effective judicial protection oblige the national court to disapply a provision of national law*** or not to follow the only interpretation of that provision which seems to it to accord with the national constitution ***if, in so doing, it infringes another fundamental right guaranteed by EU law.***

**It is accordingly necessary, in the third place, to weigh against one another the fundamental rights at issue** in the light of the requirements laid down in the first sentence of Article 52(1) of the Charter. Need for provisions of domestic law contain a legal basis for ordering such detention which is sufficiently accessible, precise and foreseeable in its application and provided that the limitation on the right to liberty, guaranteed by Article 6 of the Charter, that would result from so ordering complies with the other conditions laid down in that regard in Article 52(1) of the Charter. On the other hand, if there is no such legal basis in domestic law, EU law does not empower that court to have recourse to such a measure.”