

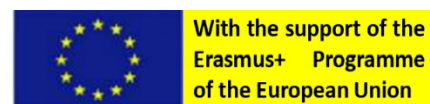
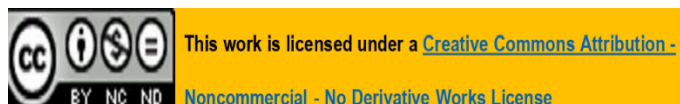
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Article 47 of the Charter of Fundamental Rights of the European Union on the Right to an Effective Remedy and a Fair Trial

In this paper, I discuss the right to an effective remedy and to a fair trial in the Charter of Fundamental Rights of the European Union.

First of all, it is necessary to look at the content of the Article 47 of the Charter of Fundamental Rights of the European Union which states that:

"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 accordance with the conditions laid down in this Article.



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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 be entitled to be advised, defended, and represented. Legal aid shall be provided free of charge to those who lack sufficient resources as far as such aid is necessary to ensure effective access to justice".

The main purpose of the article is to confer the subjective right to invoke the activity of judicial bodies through a fair and impartial process.

As key elements, we must underline that this precept attributes three essential rights. The first is effective judicial protection, i.e., access to justice; the second is the right to a fair trial as a guarantee of the rule of law; and the third is the right to free legal aid as a measure of protection against economic vulnerability.

According to settled case law, effective judicial protection is a general principle of European law, which results from the constitutional traditions common to the member states and which has been enshrined in Articles 6 and 13 of the ECHR. However, the effective judicial protection enshrined

in the CFREU is more protectionist as it guarantees an effective remedy before a judge.

This has been reflected in the judgments of the ECJ (now CJEU) of 15 May 1986: *Johnston*, 2222/84, of 15 October 1987: *Heylens*, of 03 December 1992: *Borrelli*, 2222/84, ECR 1992.

It is also worth noting the relationship with Article 19.1 and 19.2 (2nd para.) TEU, which provides that: "*Member states shall provide the necessary means of redress to ensure effective judicial protection in the areas covered by union law (...) The judges and advocates-general of the Court of Justice and the judges of the General Court shall be chosen from persons whose independence is beyond doubt and who satisfy the conditions laid down in Articles 253 and 254 of the Treaty on the Functioning of the European Union*".

The Judgment of the CJEU (Grand Chamber) of 20 April 2021, Case C-896/19. Case C-896/19. *Republikka v Il Prim Ministru*, which considers that national provisions of a member state which confer on the prime minister a decisive power for the appointment of members of the judiciary, while providing for the intervention of an independent body responsible for assessing candidates for

judicial office and reporting thereon, are not contrary to EU law, and therefore do not infringe the right to effective judicial protection.

Another important issue surrounding Article 47 is the right to an independent and impartial hearing and trial within a reasonable time.

This paragraph of Article 47 finds its reference basis in Article 6.1. of the ECHR.

In EU Law, the right to a court does not only apply to disputes concerning rights and obligations of a civil nature (e.g., administrative litigation). This is one of the consequences of the fact that the union is a community based on the rule of law → STJUE of 23 April 1986, ECR 1986. Case 294/83. Les Verts v. European Parliament. However, except as regards their scope of application, the guarantees offered by the ECHR apply in a similar way in the Union.

Article 47 CDFUE (3rd paragraph) establishes:

"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".

Additionally, the Council Directive 2002/8/EC of 27 January 2003 improved access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes states:

- Cross-border disputes only
- Jurisdictions: civil and commercial
- Express exclusion: fiscal, customs, and administrative
- Including: legal advice, legal assistance, and representation in court
- Exemption from costs.