

# Charter rights

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# Social rights – Title IV

- General provisions -
- Article 51 – need to find a link to EU law
- Article 52.5 – distinction between rights and principles
- Article 52.6 – references to national law
- also Protocol relating to UK and Poland

# Social rights – Article 27

- Workers' right to information and consultation within the undertaking
- Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.
- Link to EU law – general directive 2002/14; specific provisions in directives on acquired rights, collective redundancies, atypical work

# Social rights – Article 28

- Right of collective bargaining and action
- Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.
- Link to EU law: EU has no power to regulate issues (Article 153 TFEU). But possible conflict with free movement law (*Laval, Viking Line*), or anti-discrimination law (ie content of collective agreements); nb social partners' role at EU level, use of collective agreements to implement EU law generally or as regards specific provisions (cf working time directive); economic governance ('Monti clause')

# Social rights – Article 29

- Right of access to placement services
- Everyone has the right of access to a free placement service.

# Social rights – Article 30

- Protection in the event of unjustified dismissal
- Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.
- Link to EU law – power to adopt general rules on termination of employment (Article 153 TFEU, unanimous voting) not used; possibly economic governance; dismissal related to other EU legislation (ie discrimination law, atypical workers)

# Social rights – Article 31

- Fair and just working conditions
- 1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
- 2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.
- Link to EU law – Article 31.1 health and safety law, maybe economic governance; Article 31.2 working time Directive 2003/88

# Social rights – Article 32

- Prohibition of child labour and protection of young people at work
- The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.
- Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.
- Link to EU law – young workers' Directive, 1994



# Social rights – Article 33

- Family and professional life
- 1. The family shall enjoy legal, economic and social protection.
- 2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.
- Link to EU law – pregnant workers' Directive (includes maternity rights); parental leave directive; general sex discrimination directive (see *Mayr* judgment)

# Social rights – Article 34.1

- Social security and social assistance
- 1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
- Link to EU law – Art 34.1 competence in Art 153 TFEU, with unanimous vote and subject to limitations; not exercised

# Social rights – Article 34.2 & 3

- 2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
- 3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.
- Link to EU law – Art 34.2, EU law on social security coordination, equality in social advantages for EU citizens; Art 34.3 EU permanent residents, immigration & asylum law (*Kamberaj* judgment, long-term residents' directive)

# Social rights – Article 35

- Health care
- Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.
- Link to EU law – limits on harmonisation in TFEU, but legislation on pharmaceuticals, medical products, patients' free movement rights, medical professionals' free movement and working time, consumer health

# Social rights – Article 36

- Access to services of general economic interest
- The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.
- Link to EU law: legislation and Treaty rules on free movement, energy, state aids, public service regulation

# Social rights – Article 37

- Environmental protection
- A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.
- Link to EU law – extensive legislation and treaty-making on environmental issues; links with free movement law and commercial (trade) policy

# Social rights – Article 38

- Consumer protection
- Union policies shall ensure a high level of consumer protection.
- Link to EU law: EU legislation on consumer rights (product safety, contract terms, timeshares, package holidays, unfair sales practices, general consumer rights directive, advertising, specific sectors, free movement, civil jurisdiction, competition law)

# Citizens' rights – Title V

- Note – Article 52.2 of Charter
- Article 39 - Right to vote and to stand as a candidate at elections to the European Parliament
- Article 40 - Right to vote and to stand as a candidate at municipal elections
- Article 41 - Right to good administration
- Article 42 - Right of access to documents



# Charter – citizens' rights

- Article 43 – Ombudsman
- Article 44 – right to petition
- Article 45 - Freedom of movement and of residence
- Article 46 - Diplomatic and consular protection

# Charter – Article 41.1 & 2

- 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 and bodies of the Union.
- 2. This right includes:
  - . the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
  - . 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;
  - . the obligation of the administration to give reasons for its decisions.

# Charter – Article 41.3 &4

- 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.

# Charter – Article 41

- Scope of Article 41 – *Cicala* judgment – directed to EU institutions
- *MM* judgment , 2012 – assumed applicability to Member States, as regards right to a hearing in asylum cases; nb preamble in revised asylum procedures directive

# Charter – Title VI - justice

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

# Charter – Article 47

- 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.

# Charter explanations – Article 47.1

- The first paragraph is based on Article 13 of the ECHR.
- However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 *Johnston* [1986] ECR 1651...).

# Charter explanations – Article 47.1

- 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....



# Explanations – Article 47.2

- The second paragraph corresponds to Article 6(1) of the ECHR.
- In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, *‘Les Verts’ v European Parliament* (judgment of 23 April 1986, [1986] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

# Charter explanations – Article 47.3

- With regard to the third paragraph, it should be noted that in accordance with the 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 (ECHR judgment of 9 October 1979, Airey, Series A, Volume 32, p. 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.

# Case law example

- Case C-279/09 DEB, Dec. 2010, Court of Justice
- - corporate plaintiff (legal person) sought legal aid to sue German government for damages resulting from alleged non-implementation of EU law on energy market liberalisation
- ‘32 According to the explanations relating to that article [47], which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, have to be taken into consideration for the interpretation of the Charter, the second paragraph of Article 47 of the Charter corresponds to Article 6(1) of the ECHR.’

# DEB case

- 33 In the light of the above, it is necessary to recast the question referred so that it relates to the interpretation of the principle of effective judicial protection as enshrined in Article 47 of the Charter, in order to ascertain whether, in the context of a procedure for pursuing a claim seeking to establish State liability under EU law, that provision precludes a national rule under which the pursuit of a claim before the courts is subject to the making of an advance payment in respect of costs and under which a legal person does not qualify for legal aid even though it is unable to make that advance payment.
- 34 It is apparent from Paragraph 122(1) of the ZPO that legal aid may cover both court costs and debts owed to lawyers. Since the national court has not specified whether the question referred relates to the aspect of court costs alone, it is necessary to examine both aspects

# DEB case

- 35 As regards the Charter, Article 52(3) thereof states that, in so far as the Charter contains rights which correspond to those guaranteed by the ECHR, their meaning and scope are to be the same as those laid down by the ECHR. According to the explanation of that provision, the meaning and the scope of the guaranteed rights are to be determined not only by reference to the text of the ECHR, but also, inter alia, by reference to the case-law of the European Court of Human Rights. The second sentence of Article 52(3) of the Charter provides that the first sentence of Article 52(3) is not to preclude the grant of wider protection by EU law (see, to that effect, Case C-400/10 PPU *McB* [2010] ECR I-0000, paragraph 53).

# DEB case

- 36 As regards in particular Article 47(3) of the Charter, the last paragraph of the Explanation relating to Article 47 mentions the judgment in *Airey v. Ireland* of 9 October 1979 (Eur. Court H.R., Series A, No 32, p. 11), according to which provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy. No indication is given as to whether such aid must be granted to a legal person or of the nature of the costs covered by that aid.
- 37 That provision must be interpreted in its context, in the light of other provisions of EU law, the law of the Member States and the case-law of the European Court of Human Rights.