

Matteo Bonelli, Mariolina Eliantonio and Giulia Gentile, *Article 47 of the EU Charter and Effective Judicial Protection, Volume 1: The Court of Justice's Perspective*. Oxford: Hart Publishing, 2022. xxviii + 299 pages. ISBN: 9781509947942. GBP 90.

The Treaty of Lisbon marked a new phase in the European Union's commitment to fundamental rights protection, both by EU institutions and Member States when implementing EU law, by recognising the legally binding status of the Charter of Fundamental Rights of the European Union (CFR). This edited collection is the first of two volumes exploring the interpretation and application of the principle of effective judicial protection in light of Article 47 CFR by the Court of Justice of the European Union (CJEU). Falling under the "Justice Title" of the Charter, this provision enshrines the right to an effective remedy, the right to a fair trial, and the right to legal aid to ensure effective access to justice. In the past decade, a significant body of case law has developed which confirms the necessity and timeliness of this ambitious project – all the more so as Article 47 CFR has

emerged in quantitative terms as the provision most commonly cited in litigation before the CJEU and national courts (p. 2).

This first volume brings together legal scholars, a judge of the CJEU writing in their personal capacity, and a former member of the European Commission, to undertake a doctrinal analysis of how the CJEU has interpreted and applied the provision at the EU level, both in broad constitutional terms (Part 1) and in eight different policy sectors (Part 2). The second volume (not discussed here) explores how the national courts in some Member States have responded to Article 47 CFR.

The seven chapters in Part 1 focus on the constitutional dimension of Article 47 CFR. For some, Chapter 5 by Bonelli may be a useful starting point. His chapter takes a holistic overview of the growing *acquis* and presents a useful paradigm for analysing the impact of Article 47 CFR on national procedural autonomy. According to Bonelli, the Court's case law is developing along three different paths. The first category refers to cases where EU secondary legislation designed to harmonize national procedural rules is being read "in the light of Article 47 CFR" resulting in an increase in the standards of judicial protection and consequently reducing national procedural autonomy. A second arm of case law sees the primacy and direct effect of Article 47 CFR requiring the creation of new judicial remedies or a declaration of a court's competence to adjudicate on a question of EU law in a number of different contexts. The third dimension refers to case law which deals with structural and institutional elements of judicial protection in the Member States. These include seminal judgments in which the Court has fleshed out the substantive content of Article 19(1) TEU, second subparagraph, to introduce EU standards of judicial independence with which Member States must comply, and which are discussed in more depth in Chapter 1 by Prechal and in Chapter 4 by Krajewski. In sum, Bonelli argues that the time has come "to speak of limits to national autonomy *tout court*" (p. 82), since the Court's case law is no longer having an impact just on national *procedural* autonomy but also on the remedial and institutional autonomy of the Member States. He argues that this should not come as a surprise since it reflects "a long-term trend of the centralization or harmonization of the EU system of judicial protection" (p. 82). Neither should it be considered judicial activism since the Court's case law reflects the "logical consequence" of codifying the principle of effective judicial protection in Article 19(1) TEU and Article 47 CFR by the Treaty of Lisbon (p. 82).

The remaining chapters in the first part of the volume focus more specifically on the relationship between Article 47 CFR and key provisions of the EU's system of legal protection. Chapter 2 examines the interplay between Article 47 and Articles 48, 49, and 50 CFR, its sister "Justice" provisions.

Although the case law is sparse, Gentile and Menzione argue it reflects a “fragmented, polymorph, and individualistic” (p. 44) notion of “justice” which is grounded in human rights. In Chapter 3, Wallerman Ghavanini and Rauchegger expertly analyse the role of the preliminary ruling procedure in securing the effective judicial protection of individuals’ EU rights before national courts in the current *acquis* both at the EU and national level, before exploring the “ambiguous” (p. 45) relationship with Article 267 TFEU and Article 47 CFR. They offer several thought-provoking arguments on how the Court could strengthen effective judicial protection to differing degrees by building on its *CIM* judgment (C-561/19) and drawing inspiration from national constitutional courts. The most ambitious step would be for the Court to interpret Article 267 TFEU in light of Article 47 CFR to confer a right on individual litigants to a preliminary reference grounded in EU law. The authors warn that an expansion of the rights of individual litigants in the name of effective judicial protection should not overload the CJEU or undermine the effective administration of justice at national level, and should be balanced against the rights of the opposing parties. The final chapter in the constitutional part of the volume by Eliantonio analyses the principle of effective judicial protection and Article 47 CFR, first on national rules pertaining to the finality of judicial decisions (*res judicata*) and, second, on rules which determine the power for courts to raise *ex officio* points of law which have not been invoked by the parties. Eliantonio’s findings reveal an interesting counterpoint to the general trend found in the rest of the volume. Her analysis reveals the Court’s reasoning has not significantly changed post-Lisbon, and continues to centre on Article 4(3) TEU and the principles of equivalence and effectiveness. References to the principle of effective judicial protection and Article 47 CFR “remain in the background” (p. 120). Eliantonio argues that if a national rule on *res judicata* is tested against the principle of effectiveness in a narrow way such as in *XC* (C-234/17), it is feasible that Article 47 could offer an enhanced standard of judicial protection. In contrast, with regard to the duty on national courts to raise points of EU law not relied on by the parties *ex officio*, drawing on Article 47 CFR would not seem to provide any added value to the current approach. Nevertheless, she argues there may be role for Article 47 CFR where the duty to raise matters of EU law *ex officio* leads to EU law being raised against the applicant.

Part 2 analyses how Article 47 CFR is being interpreted in eight specific policy fields: non-discrimination, asylum and migration, judicial co-operation in criminal matters under the European Arrest Warrant (EAW), Common Foreign Security Policy, environmental policy, public procurement, competition, and taxation. Given the nature of an edited collection and the volume of the Court’s case law, the chapters do not give a comprehensive

account of each policy field. Nevertheless, each chapter thoughtfully maps out where the Court's reliance on Article 47 CFR adds value by increasing standards of effective judicial protection, where there may be gaps or inconsistencies, and where the Court could adopt a bolder approach with more explicit references to Article 47 CFR. For example, in Chapter 7 on non-discrimination, Gutman argues that the Court could raise standards further in some circumstances by conducting an assessment through the lens of Article 47 CFR rather than the principles of effectiveness and equivalence, or by making explicit references to Article 47 CFR in its reasoning. In several chapters where the policy field is politically sensitive, such as asylum and migration, and extradition procedures under the EAW, the authors carefully identify where and why the Court feels it has to tread more carefully and refrain from intruding too far on national procedural, remedial, or institutional autonomy. Nevertheless, we are reminded by Reneman that the CJEU is in a unique institutional position to act as a bulwark against the over-politicization of policy fields such as asylum, and could rely on Article 47 CFR to propagate a commitment to fundamental rights protection where the Member States and EU legislature fail to do so (p. 157).

It is clear from the collection that Article 47 CFR has led to a qualitative increase in the standards of judicial protection for individuals. Yet, this uplift is not universal. The multiple threads of this mixed picture are drawn together by the editors in the concluding chapter. The breadth of the collection and expertise of the authors is impressive. The volume is a welcome and important addition to the literature. It should be the first port of call for scholars wishing to understand how Article 47 CFR has emerged as the "legal anchor" upon which the Court establishes the "essential elements of the administration of justice in the EU" (p. 274), while at the same time using it to constrain "the justice design choices of the Member States" and subjecting them to structural and procedural obligations grounded in EU law (p. 274).

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