

Aligning Article 47 of the Charter and Articles 6 and 13 ECHR

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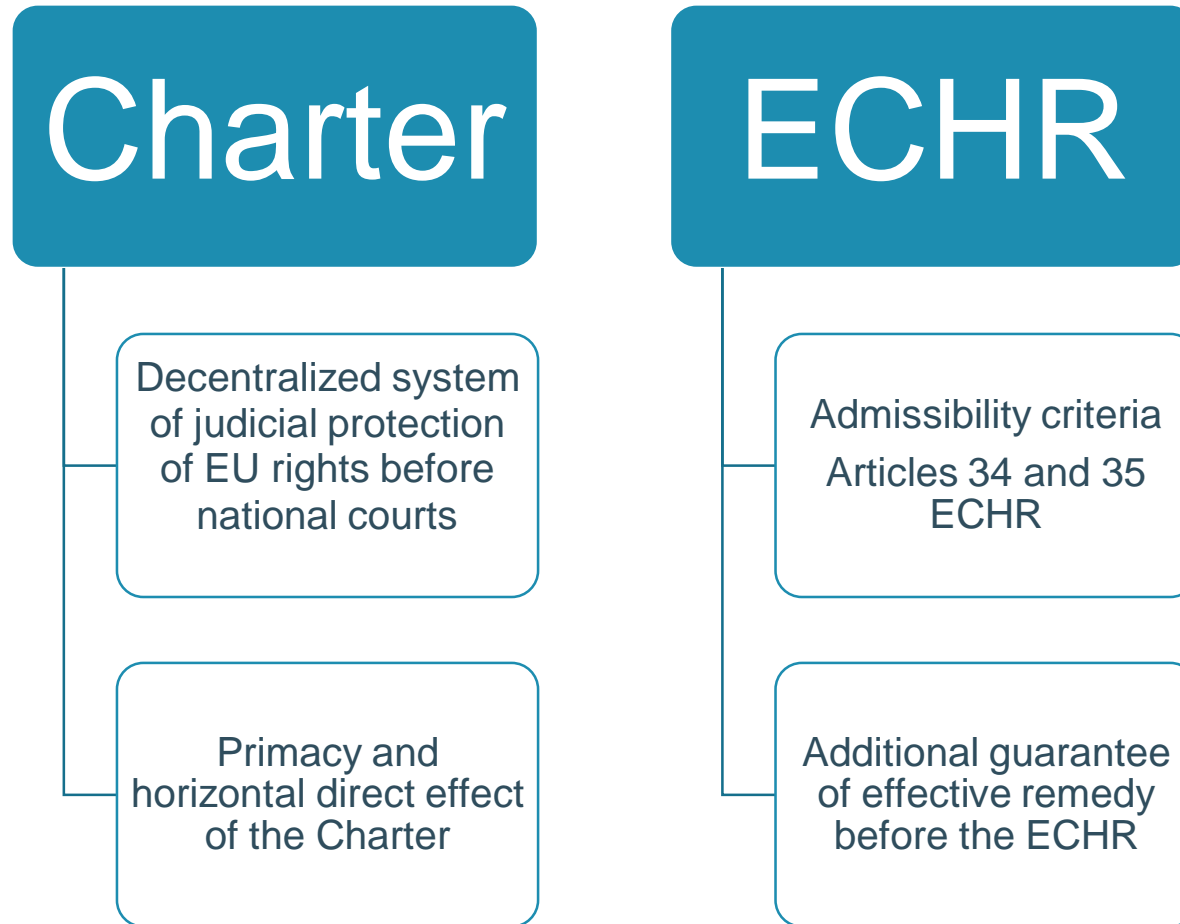
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Outline

- Added value of the Charter compared to ECHR
 - Overview of the specificities of the two legal orders
 - Meaning of the relevant provisions
 - Scope of application of the relevant provisions
 - Added value of Article 47 Charter compared to Articles 6 and 13 ECHR
- Case law analysis on the meaning of “effective remedy” in Luxembourg and Strasbourg
 - Convergence
 - Divergence
- Food for thoughts
 - The EU accession to the ECHR

Added value of the Charter vs ECHR



Added value of the Charter vs ECHR

ARTICLE 34 Individual applications

The Court may receive applications from any person, non governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

ARTICLE 35 Admissibility criteria

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of four months from the date on which the final decision was taken.
2. The Court shall not deal with any application submitted under Article 34 that (a) is anonymous; or (b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that: (a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits. 4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Added value of the Charter vs ECHR

Primacy

- In case of conflict, EU law has pre-eminence over national law and case-law → **Principle of primacy.**
- In Declaration n. 17 attached to the Lisbon Treaty; Case law of the CJEU: *Costa/Enel*, C-6/64; *Simmenthal*, C-106/77
- See *Poptawski*, C-573/17

Direct effect

- Provisions of binding EU law may be invoked and relied on by individuals before national courts → **direct effect** of EU law
 - Horizontal direct effect of EU law in disputes between individuals
- Not in the Treaties; case law of the CJEU: *Van Gend en Loos* C-26/62
- **Conditions for direct effect of EU law provisions:**
 - CLEAR
 - PRECISE
 - UNCONDITIONAL
 - NOT DEPENDENT ON ANY IMPLEMENTING NATIONAL MEASURE
- **Sources of EU law that may have direct effect:**
 - Treaty provisions
 - General principles of EU law
 - **Charter of Fundamental Rights**
 - Regulations
 - Decisions
 - International Agreements
 - Recommendations and opinions

Primacy and Direct effect of the Charter

- **Duty** of interpretation of national law in conformity with EU law
- When an EU rule applies in a given case, any conflicting national norm should be set aside → **Duty to disapply national law**
- **Provisions of the Charter having direct effect:**
 - **Article 21: non discrimination**
 - **Article 47: effective remedy and fair trial**

See Egenberger, C-414/16

The provisions

Article 6 ECHR - Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly [...].
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and facilities for the preparation of his defence; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

The provisions

ARTICLE 13 ECHR - Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

The provisions

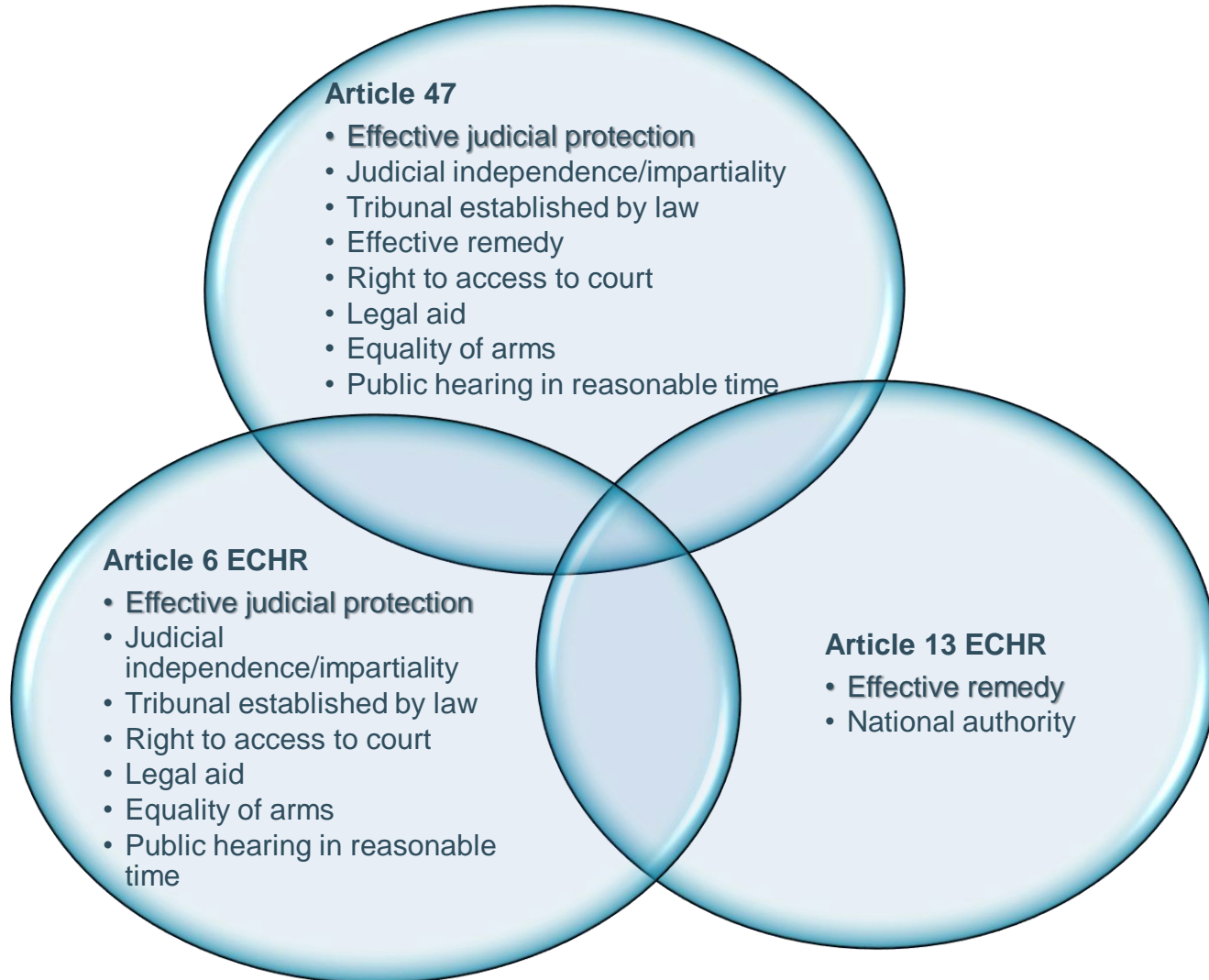
Article 47 CFREU - Right to an effective remedy and to a fair trial

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.

The provisions - Meaning



The provisions - Meaning

Article 47 — Right to an effective remedy **and** to a fair trial

- 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, namely **the general principle of effective judicial protection** (Case 222/84 *Johnston* [1986]).
- 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 CJEU.

The provisions - Meaning

Article 47 — Right to an effective remedy **and** to a fair trial

- The second paragraph corresponds to Article 6(1) of the ECHR: [fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law]
- 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.**

Scope of application – Art. 6 ECHR

Article 6 ECHR – fair trial

- **Civil limb:** “In the determination of his civil rights or obligations”
- **Criminal limb:** “or of any criminal charge against him”
- **Not mutually exclusive**

Scope of application – Art. 6 ECHR

Article 6 ECHR – fair trial

- **Civil limb:** “In the determination of his civil rights or obligations”

The judgment in *Grzęda v. Poland* [GC], 2022, recently summarised the applicable case-law principles (§§ 257-259):

- (1) existence of a dispute;
- (2) dispute must relate to a right under domestic law;
- (3) the result of the proceedings must be directly decisive for the “civil” right in question.

Scope of application – Art. 6 ECHR

Article 6 ECHR – fair trial

- **Criminal limb:** “or of any criminal charge against him”

The concept of a “criminal charge” has an “autonomous” meaning, independent of the categorisations employed by the national legal systems of the member States (*Blokhin v. Russia* [GC], 2016, § 179).

This is true both for the determination of the “criminal” nature of the charge and for the moment from which such a “charge” exists.

The test of applicability of Article 6 under its criminal head will be the same for the three paragraphs.

Scope of application – Art. 13 ECHR

Article 13 ECHR – effective remedy

- The scope or extent of the field of action of the obligation under Article 13 will vary depending on the nature of the complaint under the Convention or the nature of the right relied upon under the Convention.
- The scope of Article 13 may overlap with that of other Convention provisions which guarantee a specific remedy.

Scope of application – Article 47 Charter

Article 47 Charter – Field of application

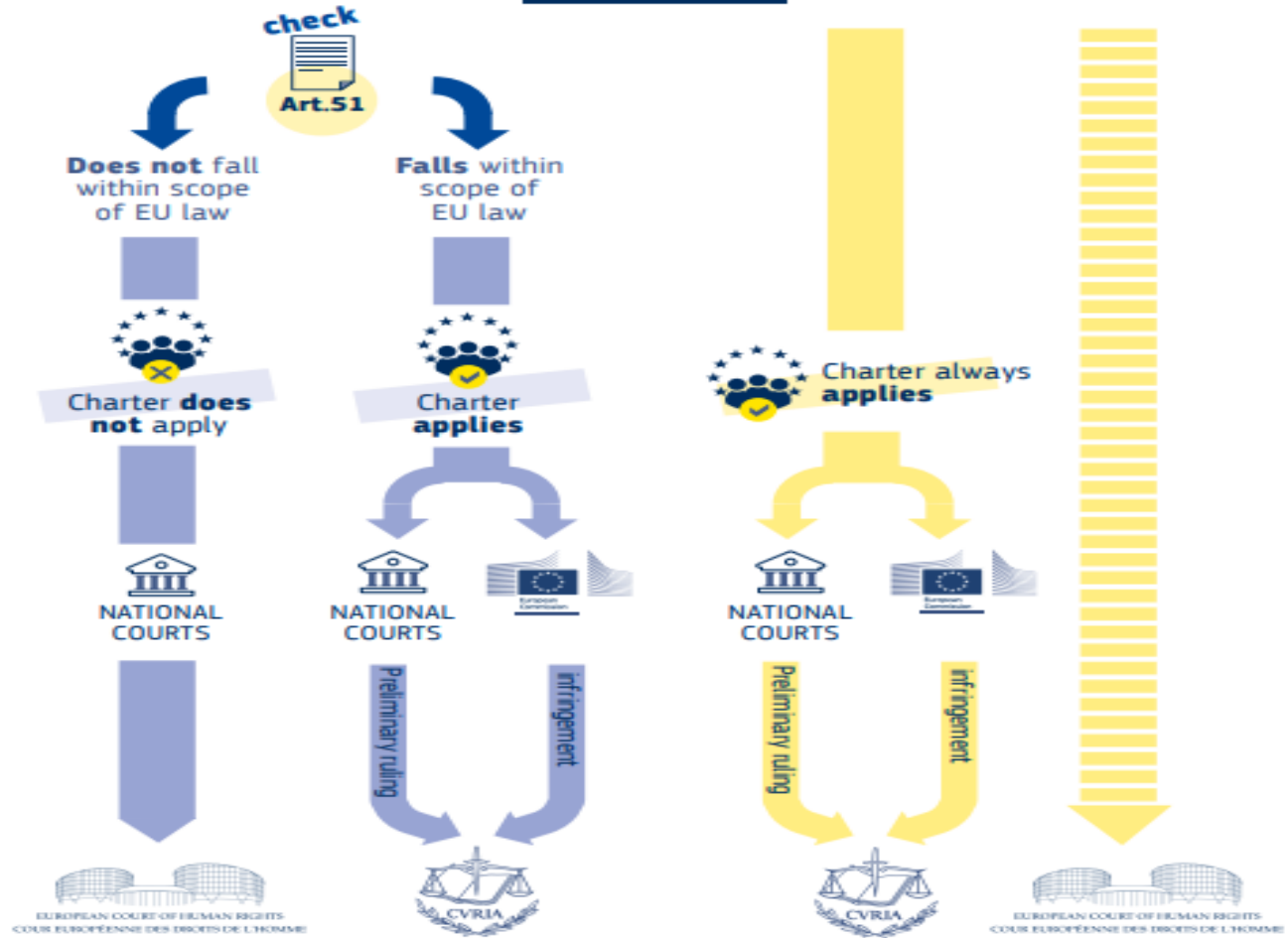
“Everyone whose rights or freedoms are violated, [...]”

Article 51(1) of the Charter – Field of application

1. 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.
2. 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.



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Source: FRA, 2018

Scope of application – Article 47 Charter

Article 51(1) Charter – Field of application

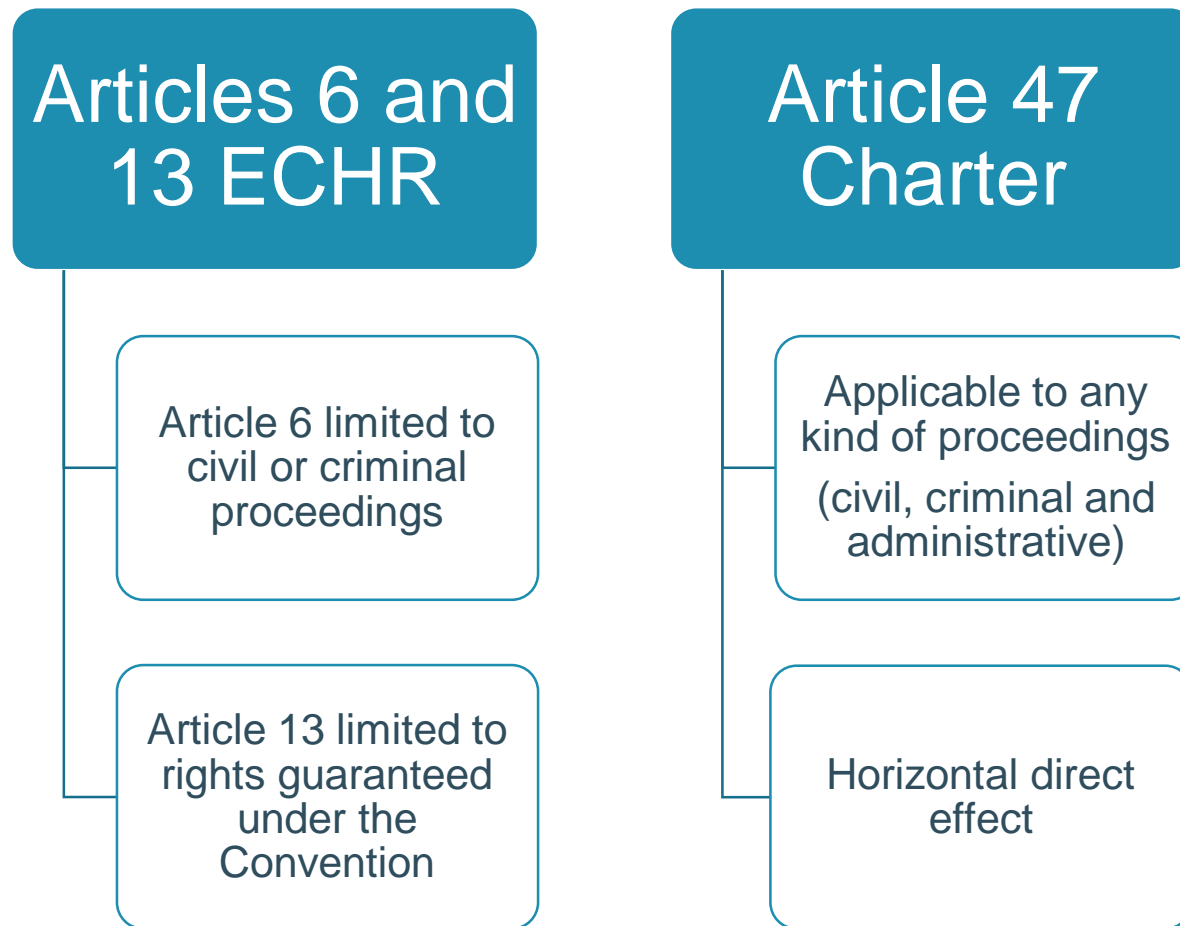
- As interpreted by the CJEU (see *Fransson*): where there is EU law, there are EU FRs
- What is relevant?

There must be a **link/connecting factor** with EU law, e.g. a directive, regulation (legislation), the exercise of one of the EU freedoms (freedom of movement, freedom of goods), and so on.

- Difference with the scope of application of Article 19(1), second subparagraph TEU that also ensures effective judicial protection under EU law:

“within the fields covered by EU law” interpreted by the CJEU as applicable to every national court or tribunal that could deal with issues or questions of EU law (see *ASJP*, C-64/16 and *Commission v Poland*, C-619/18).

Added value of Article 47 Charter



Case law analysis on the meaning of “effective remedy” in Luxembourg and Strasbourg

Article 52(3) of the Charter – scope and interpretation of rights and principles

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.

Article 53 of the Charter – Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognized, in their respective fields of application, by Union law and international law and **by international agreements** to which the Union or all the Member States are party, including the **European Convention for the Protection of Human Rights and Fundamental Freedoms**, and by the Member States' constitutions.

What does it mean “effective remedy”?

Article 6 ECHR

Right to effective
judicial remedy

effective right to
access to independent
and impartial courts
previously established
by law

Article 13 ECHR

Right to effective
remedy before a
national authority

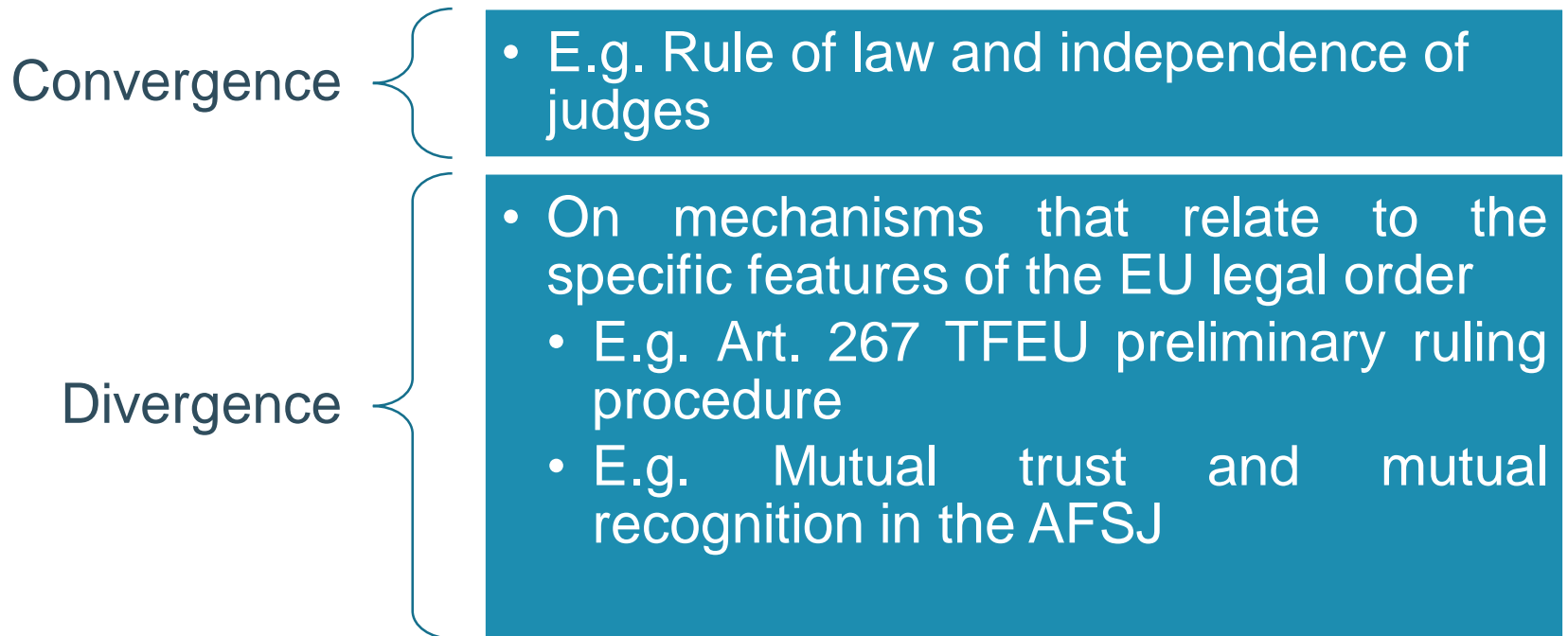
Article 6 criteria might
be relevant
Effective in law and
practice

Article 47 Charter

Right to effective
remedy before a
tribunal and to a fair
trial

- Procedural and
substantive sub-rights
- Notion of court or
tribunal (linked to Art.
267 TFEU)

Effective remedy in the case-law of the CJEU and of the ECtHR



Food for thoughts

- What would the EU accession to the ECHR change for litigants in the EU?
- Would that change the relationship between the provisions at stake?
- What about the relationship between the ECtHR and the CJEU?

Thank you for your attention!

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