

The relevance of the EU Charter for criminal lawyers

Lucie Hrdá



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TITLE VII.

General provisions governing the interpretation and application of the Charter

Article 51

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

TITLE VI.

Justice

Right to an effective remedy and to a fair trial

Presumption of innocence and right of defence

Principles of legality and proportionality of criminal offences and penalties

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

Article 47

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



Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.



Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.



Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.



„ne bis in idem“

not twice in the same thing

bis = the final decision in the case

idem = identity of the act

Case study 1

the limits of the principle „ne bis in idem“

The „final decision“ in
the case

Study case 1

QUESTION

1. Is Article 50 of the EU Charter applicable?
2. Is the discontinuance of the prosecution the final decision in the case?
3. Would the situation change if the trial had already been ordered before the decision became effective?
4. Would the situation change if the merits of the case were not considered?

Study case 1

CONCLUSION

The „final decision“ in case

Case study 2

the limits of the principle „ne bis in idem“

The „identity“
of the act

Study case 2

QUESTION

1. Can the Constitutional Court of a Member State apply Article 50 of the Charter directly in its decision?
2. Is it decisive how the offence was classified in the Member State?
3. Is this an identical act in this case?
4. How should the Constitutional Court in the Czech Republic decide?

Study case 2

CONCLUSION

The „identity“ of the act

Thank you for your attention!

mail: office@akhrda.cz

web: www.akhrda.cz

tel.: +420 777 273 601

FB: @akhrda

twitter: @JulieMontek

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