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from: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 8 May 2013

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
Union

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Subject: COMMISSION STAFF WORKING DOCUMENT  
on the Application of the EU Charter of Fundamental Rights in 2012  
Accompanying the document  
Report from the Commission to the European Parliament, the Council, the  
European Economic and Social Committee of the Regions  
2012 Report on the application of the EU Charter of Fundamental Rights

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Delegations will find attached Commission document SWD(2013) 172 final - Part 9.

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Brussels, 8.5.2013  
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Part 9/9

**COMMISSION STAFF WORKING DOCUMENT**

**on the Application of the EU Charter of Fundamental Rights in 2012**

*Accompanying the document*

**Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions**

**2012 Report on the application of the EU Charter of Fundamental Rights**

{COM(2013) 271 final}  
{SWD(2013) 171 final}

## 6. Justice

*Right to an effective remedy and to a fair trial*

The **EU adopted minimum standards on the rights, support and protection of victims of crime** which will ensure that victims are given non-discriminatory minimum rights across the EU, irrespective of their nationality or country of residence.

*Presumption of innocence and right of defence*

The implementation of the **2009 EU Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings** is well advanced. The first Directive adopted in 2011 is the Directive on the right to interpretation and translation in criminal proceedings. It was followed by the Directive on the right to information in criminal proceedings adopted in 2012. The next step will be the adoption of the Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest.

*Principles of legality and proportionality of criminal offences and penalties*

Over the past years, **Hungary** has adopted several laws – some of them so-called cardinal laws adopted directly under its new constitution – which raised important fundamental rights concerns and also came under the scrutiny of the Council of Europe. The Commission carried out its legal analysis of those points where there was a link with EU law, in accordance with the scope of application of the Charter (Article 51) and the Commission's role as guardian of the Treaties. Following first warning letters at the end of 2011, the Commission acted fast and decided to bring infringement procedures before the CJEU regarding the independence of the data protection supervisory authority and the retirement age of judges, prosecutors and notaries. The CJEU confirmed the Commission's assessment, according to which the mandatory retirement age for judges, prosecutors and notaries within a very short transitional period is incompatible with EU equal treatment law. Hungary will have to change these rules to comply with EU law.

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

The CJEU ruled in a number of important cases which concerned **compliance with Article 47 of the Charter of Fundamental Rights** on the right to an effective remedy and to a fair trial.

## Right to an effective remedy and right to a fair trial

The Charter provides that when EU rules give a right to a person, he or she can go before a court in case this right is violated. This protection is called a **right to an effective remedy**, because it provides to individuals a legal solution decided by a tribunal when an authority used EU law in an incorrect way. The right to effective remedy guarantees judicial protection against violations of any EU rule which grants rights to people. It therefore plays a key role in ensuring the effectiveness of all EU law, ranging from social policy, to asylum legislation, competition, agriculture, etc.

The EU legal framework on the rights of victims of crime was significantly reinforced by the adoption, of the **Directive establishing minimum standards on the rights, support and protection of victims of crime**<sup>112</sup>.

This new Directive will ensure that victims are given non-discriminatory minimum rights across the EU, irrespective of their nationality or country of residence. It will help to ensure that victims are recognised and treated with respect when they come into contact with the police, prosecutors and the judiciary. It also gives victims the procedural rights to be informed, supported and protected and it ensures that they can actively participate in criminal proceedings. Moreover, there is a requirement for practitioners to be trained on the needs of victims and for Member States to facilitate mutual cooperation to improve the access of victims to their rights both at EU and national level.

In the Directive there is a particular focus on the support and protection of victims who are vulnerable to secondary or repeat victimisation or intimidation during criminal proceedings. The Directive sets up a new mechanism of individual assessments that will be required for each victim to determine if they have specific protection needs and whether special measures should be put in place to protect them. These vulnerable groups include children and typically some categories of victims who often are at risk such as victims of terrorism, organised crime, human trafficking, gender-based violence, violence in close-relationship, sexual violence or exploitation, hate crime and victims with disabilities.

The Commission took action immediately after the entry into force of the **new Hungarian Constitution** and the cardinal laws which implemented it, and did not hesitate to refer Hungary very quickly to the CJEU regarding the independence of its data protection supervisory authority and regarding the retirement age of judges, prosecutors and notaries.

In line with established case law of the CJEU, the Commission considered that the **Hungarian rules regarding the retirement age of judges, prosecutors and notaries** were in violation of the EU rules on equal treatment in employment, which prohibit discrimination at the workplace on grounds of age. These rules also cover changes to the mandatory retirement age for one profession without an objective justification. In view of the urgency of the matter and the imminent retirement of 236 judges, the Commission referred the matter to the Court to deal with this question in an expedited procedure. The Court reacted promptly and delivered its ruling on 6 November 2012. The Court confirmed the Commission's assessment according to which the mandatory retirement age for judges, prosecutors and notaries, in view of the very short transitional period for its implementation, is incompatible with EU equal treatment law. Hungary will have to change these rules to comply with EU law<sup>113</sup>.

The Commission expressed its **concerns about the independence of the judiciary in Hungary** more generally and, in particular, on two essential aspects: the powers attributed to the President of the National Judicial Office to designate a court in a given case, and the possibility of a transfer of judges without their consent. The Commission was concerned that

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<sup>112</sup> Directive establishing minimum standards on the rights, support and protection of victims of crime OJ 315, 14.11.2012, p. 57-

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<sup>113</sup> CJEU, Case C-286/12, *European Commission v. Hungary*, 06.11.2012

these measures could affect the effective application of Union law in Hungary and the fundamental rights of citizens and businesses to an effective remedy by an independent court in Union law cases, as guaranteed by Article 47 of the EU Charter of Fundamental Rights.

The Commission noted that there are on-going discussions between the Hungarian authorities and the Council of Europe and its Venice Commission (which issued an opinion on the matter on 19 March 2012). The Commission will keep the matter under close review to verify compliance with the right to an effective remedy guaranteed by Article 47 of the EU Charter of Fundamental Rights in Union law cases, and will take into account whether the amendments will be implemented in line with the Venice Commission's opinions.

The Commission has advanced in **negotiations on the proposal for a regulation on the mutual recognition of protection measures in civil matters presented in May 2011**<sup>114</sup>. This instrument will ensure that victims, or potential victims, who benefit from a protection measure in their Member State of residence, do not lose this protection when crossing borders. In addition, the Commission is currently preparing further action on compensation to crime victims with the aim to address problems at national and/or cross-border level and to propose improvements to ensure victims have proper access to fair and appropriate compensation.

The **CJEU delivered important rulings that concern EU competition policy**. The Court rejected the claims introduced by three companies<sup>115</sup>, who had been fined for participating in a cartel on the market for copper plumbing tubes (used for water, gas and oil installations), that their right to an effective remedy and to a fair trial under Charter (Article 47) had been violated. In three separate proceedings, the companies claimed that the General Court infringed their right to an effective judicial remedy by failing to carry out an adequate review of the Commission's decision and deferring, to an excessive and unreasonable extent, to the Commission's discretion. One company also specifically, maintained that competition proceedings before the Commission are criminal proceedings within the meaning of the ECHR, and that, since the Commission is not an independent and impartial tribunal within the meaning of the ECHR, the General Court is required to carry out a review as regards both matters of fact and law.

Referring solely to the Charter, the CJEU observed that the judicial review of decisions imposing fines in matters of competition law entails a review of legality and, moreover, unlimited jurisdiction. As regards the unlimited jurisdiction in relation to the amount of fines, the Court stated that that jurisdiction empowers the CJEU in addition to carrying out a mere review of the lawfulness of the penalty, to substitute their own appraisal for the Commission's and, consequently, to cancel, reduce or increase the pecuniary penalty imposed. Finally, the Court held that the CJEU must carry out a review of both the law and the facts, that they have the power to assess the evidence, to annul the Commission's decision and to alter the amount of a fine. Therefore, the judicial review provided for by EU law is not contrary to the requirements of the principle of effective judicial protection set out in the Charter.

In another case that concerns competition policy<sup>116</sup>, the CJEU held that the **Commission may legitimately represent the EU before a national court in a civil action for the compensation of damages in respect of a loss it sustained as a result of the existence of cartel practices**. This case originated from the Commission Decision of 21 February 2007 ascertaining the existence of a cartel on the market for the sale, installation and maintenance of lifts and escalators in Belgium, Germany, Luxembourg and the Netherlands. In June 2008, for the first time ever, the European Commission decided to bring proceedings before a Belgian Trade Court seeking compensation to the financial loss the Union suffered for the above-market rates charged by these companies, as the Union itself had contracted out to them the installation, maintenance and renovation of lifts and escalators in different EU buildings in Belgium and Luxembourg.

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<sup>114</sup> Proposal for a Regulation on mutual recognition of protection measures in civil matters, COM(2011) 276 final. Available at: [http://ec.europa.eu/justice/policies/criminal/victims/docs/com\\_2011\\_276\\_en.pdf](http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_276_en.pdf)

<sup>115</sup> CJEU, Case C-272/09, *KME Germany and Others v Commission*, 20.1.2012; CJEU, Case C-386/10, *Chalkor v Commission*, 20.1.2012; CJEU, Case C-389/10, *KME Germany and others v Commission*, 20.1.2012

<sup>116</sup> CJEU, Case C-199/11, *Europese Gemeenschap v Otis NV, General Technic-Otis Sàrl, Kone Belgium NV, Kone Luxembourg Sàrl, Schindler NV, Schindler Sàrl, ThyssenKrupp Liften Ascenseurs NV, ThyssenKrupp Ascenseurs Luxembourg Sàrl*, 6.11.2012

The CJEU held that these circumstances do not run counter to either the **judiciary's independence** or the principle of **equality of arms** between parties to civil proceedings in so far as EU law provides for a system of judicial review of Commission decisions in the field of competition policy which affords all the safeguards required by Article 47 of the Charter. The Court therefore ruled that the Charter does not preclude the Commission from bringing an action for compensation for losses sustained by the EU as a result of an agreement or practice contrary to EU law.

Another case<sup>117</sup>, concerned the recognition and enforcement in Latvia, under Regulation No 44/2001, of a judgment in default delivered by the High Court of Justice of England and Wales, Queen's Bench Division (United Kingdom). The CJEU stipulated that this Regulation must be interpreted as meaning that the courts of the Member State in which enforcement is sought may refuse, only if it appears to the court, that that judgment is a manifest and disproportionate breach of the defendant's right to a fair trial referred to in the Charter of Fundamental Rights (Article 47), on account of the impossibility of bringing an appropriate and effective appeal against it.

#### **Enforcement of the Visa Border Code regarding the right of appeal against a visa refusal**

The EU Visa Code<sup>118</sup> requires Member States to communicate to the applicant for a short stay visa the reasons on which a decision of refusal is based and to grant the right of appeal against a visa refusal, annulment, or revocation. This relates directly to the right to an effective remedy and to a fair trial. In late 2012, the Commission has already contacted several Member States' authorities where it had concerns regarding the right to appeal against a visa refusal, with a view to make use of the powers conferred to it by the Treaty, should it be confirmed that the right of appeal is not adequately ensured in some of those Member States.

#### **Supreme Court of Estonia (Full Court)<sup>119</sup>**

The Supreme Court of Estonia made reference to CJEU case law on Article 47 of the Charter as regards the restrictions on access to tribunals flowing from the requirements under which national legislation grants legal aid to legal persons. The applicant, a company whose action for compensation against the Ministry for Environment had been dismissed, and refused to pay the required court fee on grounds of its unconstitutionality; secondarily, it filed a request for legal aid, at the same time challenging the constitutionality of the law limiting the access to it as far as legal persons are concerned. In declaring that the exclusion of legal persons from legal assistance in civil proceedings contravenes the Estonian Constitution, the Supreme Court recalled the CJEU jurisprudence<sup>120</sup> according to which "*the principle of effective judicial protection, as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it is not impossible for legal persons to rely on that principle and that aid granted pursuant to that principle may cover, inter alia, dispensation from advance payment of the costs of proceedings and/or the assistance of a lawyer.*"

#### **Dutch Appeal Court<sup>121</sup>**

In a case concerning the application of the EU Directive on unfair terms in consumer contracts, an obligation contained in the general conditions obliging the consumer to have recourse to means of arbitration was considered contrary to the right of effective remedy as stipulated in Article 47 of the Charter in a judgment by a Dutch Appeal Court.

<sup>117</sup> CJEU, Case C-619/10, *Trade Agency Ltd v Seramico Investments Ltd*, 06.09.2012

<sup>118</sup> Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code), OJ L 243, 15.9.2009.

<sup>119</sup> Supreme Court of Estonia en banc (Riigikohtu üldkogus), case 3-4-1-62-10, AS WIPESTREX GRUPP v. Republic of Estonia, 12.04.2011

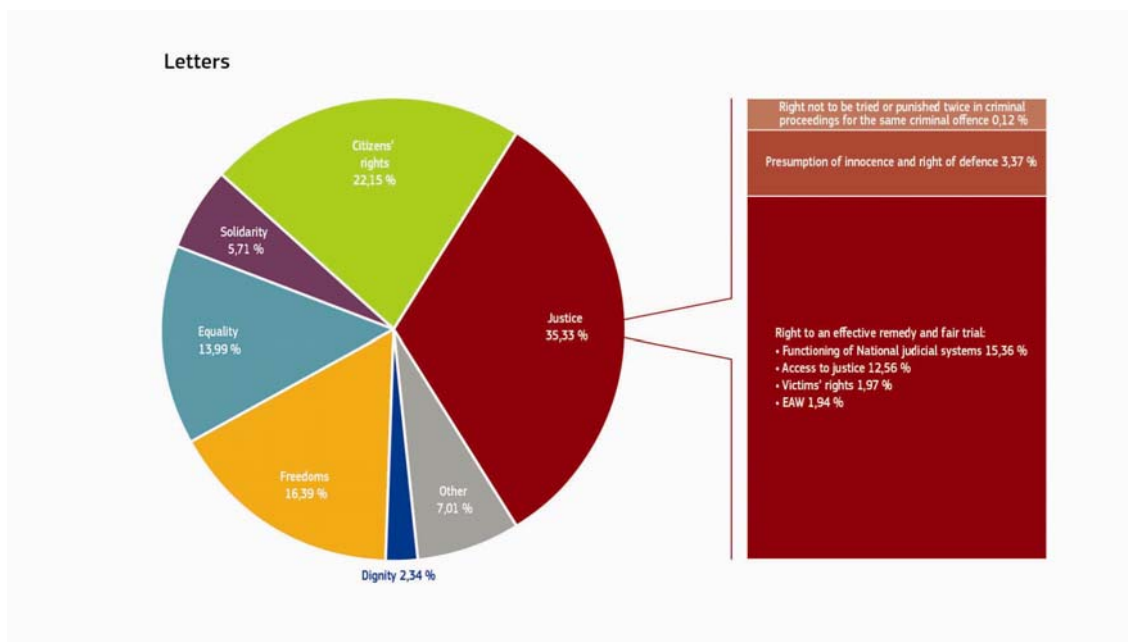
<sup>120</sup> CJEU, Case C-279/09 DEB Deutsche Energiehandels- und Beratungsgesellschaft v. Federal Republic of Germany, 22.12.2010.

<sup>121</sup> Appeal Court Leeuwarden (Gerechtshof Leeuwarden), Case 200.040.671/01; LJN: BR 2500, decision of 5.7.2011

The Court argued that with such clause the consumer loses his right to approach a regular court.

### Austrian Administrative Supreme Court

In a case before the Austrian Administrative Supreme Court<sup>122</sup>, the assessment by the competent Ministry of the environmental impact of a decision allowing the double-tracking of a certain section of a railroad was contested. The law in question transposed a Directive and the decision of the Ministry on granting or refusing the authorisation falls within the scope of Union law. Referring to Art 47 of the Charter in order to emphasise the relevance of the principle of effective judicial control, the Court rejected the appeal as inadmissible arguing that where Union law provides for a special right to judicial protection, an instance of judicial control furnished with unlimited jurisdiction has to decide before a case can be brought before the Supreme Administrative Court which has to control the impugned decision on the base of facts of the case as assumed by the authority and which is limited in oral hearings to questions of law. However, the Constitutional Court lifted that decision considering that there was no manifest contradiction between Union law and national law.



### Presumption of innocence and right of defence

The Charter provides that everyone who has been charged shall be presumed innocent until proven guilty according to the law. It further specifies that respect for the right to defence of anyone who has been charged shall be guaranteed.

Safeguarding **procedural rights of suspect and accused persons** remains a priority of the Commission. Both the Charter (especially Articles 47 and 48) and the ECHR (especially Articles 5 and 6) constitute the common basis for the protection of the rights of suspected or accused persons in criminal proceedings in the pre-trial and in trial stages.

Mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards of procedural rights in criminal proceedings. It presupposes that the competent authorities of the Member States trust the criminal justice systems of the other Member States. Mutual trust will be greatly enhanced if Member States are confident that their neighbours have a criminal justice system that guarantees fair trials.

By making progress on these different initiatives, the Commission is keeping-up with the EU commitment to fundamental rights for all citizens and to enhance mutual trust. The

<sup>122</sup> Austrian Administrative Supreme Court (Verwaltungsgerichtshof), case 2010/03/0051, decision of 30.9.2010

implementation of the **2009 Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings**<sup>123</sup> is now well advanced. The first Directive adopted already in 2011 is the Directive on the right to interpretation and translation in criminal proceedings<sup>124</sup>. It was followed by the Directive on the right to information in criminal proceedings of 22 May 2012.<sup>125</sup> The next step will be the adoption of the Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest<sup>126</sup>. Measures such as these, facilitated by the new context for criminal justice after the entry into force of the Lisbon Treaty, will ensure the balanced development of criminal justice within the EU area of justice, freedom and security.

The Commission proposed a new **Directive on the confiscation and recovery of criminal assets in the European Union**<sup>127</sup>. This Directive will make it easier for Member States to confiscate the profits that criminals make from organised crime. The Directive aims at attacking the financial incentive which drives most serious and organised crime, at protecting the EU economy against infiltration by criminal groups, and at returning criminal assets to governments and citizens. The Directive draws on international Conventions and best practice recommendations. It will simplify existing rules and fill gaps which have benefited persons convicted and suspected of crime until now.

The Commission conducted a thorough impact assessment when preparing its proposal on the confiscation and recovery of criminal assets in the EU and held extensive internal consultations in order to ensure that all provisions fully respect fundamental rights. The latter include the right to property, the presumption of innocence and the right of defence, the right to a fair trial, the right to a fair and public hearing within a reasonable time, the right to an effective judicial remedy before a court and the right to be informed on how to exercise it, the right to respect for private and family life, the right to protection of personal data, the right not to be tried or punished twice in criminal proceedings for the same criminal offence and the principles of legality and proportionality of criminal offences.

The European Parliament requested an opinion from the FRA on the extent to which confiscation of proceeds of crime could go without breaching fundamental rights. The FRA examined the substantive provisions of the proposal, by focusing on the introduction of non-conviction based confiscations, extended powers of confiscation and confiscation from a third party<sup>128</sup>.

The **Commission increased its financial support for the training of legal practitioners on fundamental rights**, following the ambitious targets set in 2011 for expanding training for legal practitioners in Europe on how to apply European law<sup>129</sup>. During 2012, the Commission funded 32 legal training courses on fundamental rights, covering topics such as gender equality, anti-discrimination, data protection and trafficking in human beings. Furthermore, the Commission has funded 12 judicial training courses mainly on the question of victims' rights. This aid in building an independent, well-trained and efficient judiciary that is essential for a functioning justice area and single market in Europe.

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<sup>123</sup> Resolution of the Council on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, OJ C 295, 4.12.2009, p. 1.

<sup>124</sup> Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, OJ L 280, 26.10.2010, p. 1.

<sup>125</sup> Directive 2012/13/EU on the right to information in criminal proceedings, OJ L 142, 1.6.2012, p. 1.

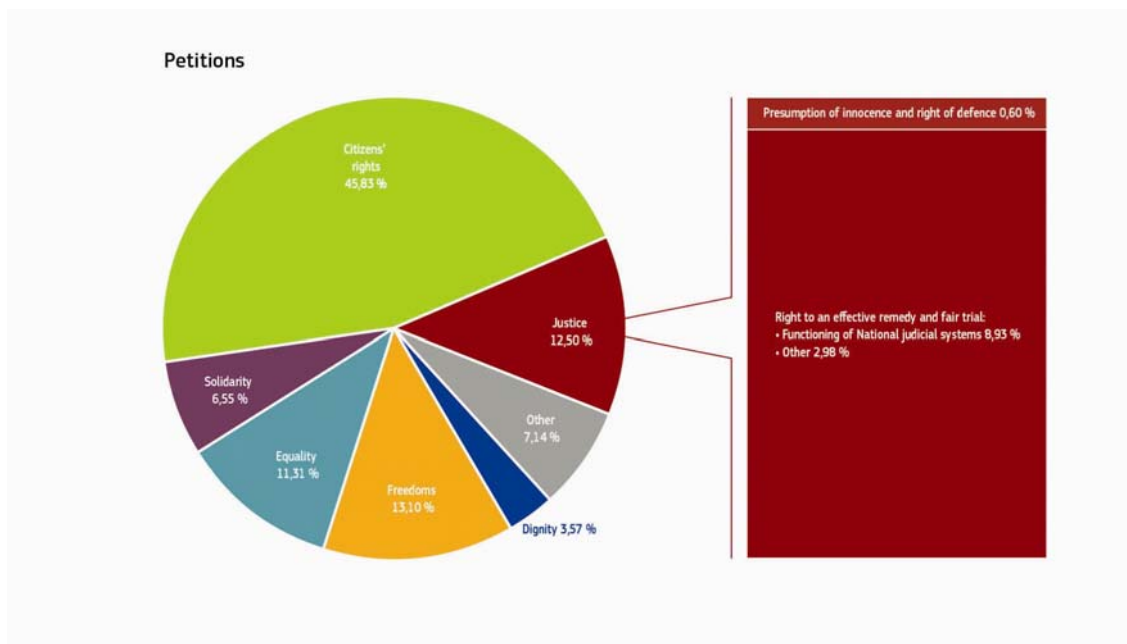
<sup>126</sup> Proposal for a Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, COM (2011) 326 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0326:FIN:EN:PDF>.

<sup>127</sup> COM(2012) 85 final

<sup>128</sup> Available at: <http://fra.europa.eu/en/opinion/2012/fra-opinion-confiscation-proceeds-crime>

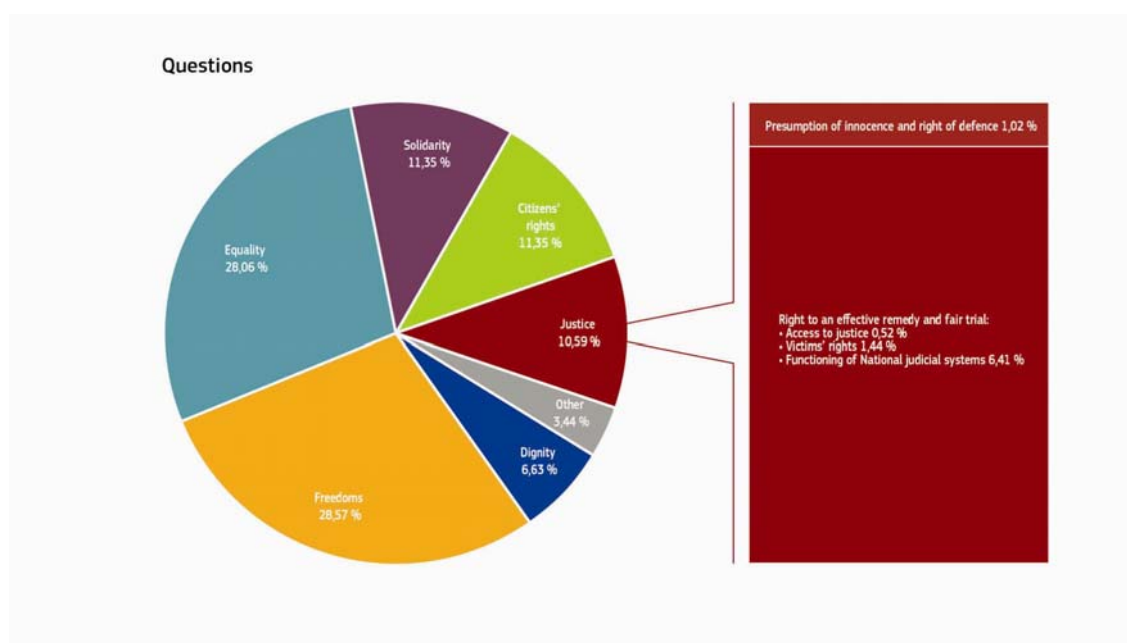
<sup>129</sup> Commission Communication: Building trust in EU-wide justice, a new dimension to European judicial training, COM(2011) 551 final, Available at: [http://ec.europa.eu/justice/criminal/files/2011-551-judicial-training\\_en.pdf](http://ec.europa.eu/justice/criminal/files/2011-551-judicial-training_en.pdf)





## Principles of legality and proportionality of criminal offences and penalties

Some fundamental rights are guaranteed in absolute terms and cannot be subject to any restrictions. Interferences with other rights may be justified if, subject to the principle of proportionality, they are necessary and genuinely serve to meet objectives of general interest recognised by the Union. Such justification is provided for in the proposals of the Commission on the *protection of the Union's financial interests by means of criminal law*<sup>130</sup>. In particular the right to liberty (Article 6 in the Charter), the freedom to choose an occupation (Article 15), the right to conduct a business (Article 16), the right to property (Article 17), principles of legality and proportionality of criminal offences (Article 49), the right not to be tried and punished twice (Article 50) were assessed by the Commission in relation to the proposed criminal law measures. It was concluded that the proposed measures would affect these fundamental rights, but that these interferences with fundamental rights are justified because they serve to meet objectives of general interest recognised by the Union; in this case to provide effective and deterring measures for the protection of Union's financial interests.



<sup>130</sup> Proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law, COM(2012) 363 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0363:FIN:EN:PDF>.

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

The *ne bis in idem* principle is one of the cornerstones of criminal law and is based on the principle that no one shall be held 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. Article 50 provides that criminal laws should respect this.

The **CJEU clarified the scope of application of the *ne bis in idem* in a preliminary ruling that** concerned a Polish farmer who had been excluded from benefiting from agricultural aid on the ground of a false declaration of the area of his farm<sup>131</sup>. The farmer contested that the imposition of a criminal penalty for the same act. The Court examined the case-law of the ECtHR on the concept of 'criminal proceedings' and noted that three criteria are relevant for defining that concept. The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence and the third is the nature and degree of severity of the penalty that the person concerned is liable to incur. As regards the first criterion, the Court observed that the measures which exclude a farmer from benefiting from aid are not regarded as criminal in nature by EU law. As regards the second criterion, the Court considered that those measures can apply only to economic operators who have recourse to the aid scheme in question, and that the purpose of those measures is not punitive, but is essentially to protect the management of EU funds. As regards the third criterion, the Court found that the sole effect of the penalties provided for by EU law is to deprive the farmer in question of the prospect of obtaining aid. On these grounds the Court found that the measures which excluded the farmer from benefitting from legal laid could not be classified as criminal. Consequently, there was no violation of the right not to be tried or punished twice in criminal proceedings for the same criminal offence.

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<sup>131</sup> CJEU, Case C-489/10, *Lukasz Marcin Bonda*, 5.7.2012

## Appendix I

### Overview of the 2012 CJEU case law which directly quotes the Charter or mentions it in its reasoning:

| Name of the parties               | Case     | Date       | Subject matter            | Charter Title    | Charter right(s)   | Grand Chamber |
|-----------------------------------|----------|------------|---------------------------|------------------|--|---------------|
| 1. Luksan                         | C-277/10 | 09/02/2012 | Intellectual property     | Freedoms         | Right to property  | N             |
| 2. Toshiba Corporation and Others | C-17/10  | 14/02/2012 | Competition               | Justice          | Principle of legality of criminal offences and penalties   | Y             |
| 3. Germany v Commission           | T-59/09  | 14/02/2012 | Access to documents       | Citizens' rights | Right of access to documents   | N             |
| 4. Grasso v Commission            | T-319/08 | 14/02/2012 | Fisheries                 | Justice          | Right to an effective remedy   | N             |
| 5. SABAM                          | C-360/10 | 16/02/2012 | Communications            | Freedoms         | Right to intellectual property / Freedom to conduct a business / Protection of personal data / Freedom of expression and information | N             |
| 6. Marcuccio v Commission         | F-3/11   | 29/02/2012 | EU Civil Service Tribunal | Citizens' rights | Right to good administration / Right to an effective remedy  | N             |
| 7. Netherlands v Commission       | T-29/10  | 02/03/2012 | Competition - State aid   | Citizens' rights | Right to good administration   | N             |

|     |  |          |            |  |                  |   |   |
|-----|--|----------|------------|--|------------------|---|---|
| 8.  | B.I. v Cedefop                                   | F-31/11  | 07/03/2012 | EU Civil Service Tribunal                                  | Citizens' rights | Right to good administration                      | N |
| 9.  | G  | C-292/10 | 15/03/2012 | Civil law  | Justice          | Right to an effective remedy and to a fair trial  | N |
| 10. | Fulmen v Council                                 | T-439/10 | 21/03/2012 | Common foreign and security policy - nuclear proliferation | Justice          | Right to an effective remedy and to a fair trial  | N |
| 11. | Slovak Telekom v Commission                      | T-458/09 | 22/03/2012 | Competition  | Citizens' rights | Right to good administration                      | N |
| 12. | Egan and Hackett v Parliament                    | T-190/10 | 28/03/2012 | Access to documents - data protection                      | Justice          | Right to an effective remedy                      | N |
| 13. | Rapone v Commission                              | F-36/10  | 28/03/2012 | EU Civil Service - EPSO concours                           | Citizens' rights | Right to good administration                      | N |
| 14. | Interseroh Scrap and Metals Trading              | C-1/11   | 29/03/2012 | Environment  | Freedoms         | Freedom to conduct a business / Right to property | N |
| 15. | Belvedere Costruzioni                            | C-500/10 | 29/03/2012 | Taxation   | Justice          | Right to a fair trial                             | N |
| 16. | Telefónica and Telefónica de España v Commission | T-336/07 | 29/03/2012 | Competition  | Justice          | Presumption of innocence and right of defence     | N |
| 17. | Buxton v Parliament                              | F-50/11  | 18/04/2012 | Employment - EU Civil Service Tribunal                     | Citizens' rights | Right to good administration                      | N |

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|---|-------------|------------|--|------------------|---|---|
| 18. Kamberaj  | C-571/10    | 24/04/2012 | Social security - discrimination against third-country nationals | Solidarity       | Non-discrimination / Social security and social assistance                      | Y |
| 19. S.C. and A.C.                                   | C-92/12 PPU | 26/04/2012 | Civil law - Rights of the child                                  | Equality         | Rights of the child   | N |
| 20. DR and TV2 Danmark                              | C-510/10    | 26/04/2012 | Intellectual property  | Freedoms         | Freedom to conduct a business   | N |
| 21. Neidel  | C-337/10    | 03/05/2012 | Employment   | Solidarity       | Fair and just working conditions  | N |
| 22. In 't Veld v Council                            | T-529/09    | 04/05/2012 | Access to documents  | Freedoms         | Protection of personal data   | N |
| 23. Nijs v Court of Auditors                        | T-184/11 P  | 15/05/2012 | Employment - EU Civil Service (appeal)                           | Justice          | Right to an effective remedy and to a fair trial                                | N |
| 24. Skareby v Commission                            | F-42/10     | 16/05/2012 | Employment - EU Civil Service Tribunal                           | Citizens' rights | Right to good administration  | N |
| 25. P.I.  | C-348/09    | 22/05/2012 | Freedom of movement - Criminal law                               | Equality         | Rights of the child   | Y |
| 26. Aitic Penteo v OHIM - Atos Worldline (PENTEO)   | T-585/10    | 22/05/2012 | Intellectual property  | Citizens' rights | Right to good administration  | N |
| 27. Imperial Chemical Industries v Commission       | T-214/06    | 05/06/2012 | Competition  | Citizens' rights | Right to good administration / Right to an effective remedy and to a fair trial | N |
| 28. Tyrolean Airways Tiroler Luftfahrt Gesellschaft | C-132/11    | 07/06/2012 | Discrimination - employment                                      | Equality         | Non-discrimination  | N |

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| 29. GREP   | C-156/12  | 13/06/2012 | Legal aid                                | Justice          | Right to an effective remedy  | N |
| 30. XXXLutz Marken v OHIM - Meyer Manufacturing (CIRCON)         | T-542/10  | 13/06/2012 | Intellectual property                    | Citizens' rights | Right to good administration  | N |
| 31. Otis Luxembourg (formerly General Technic-Otis) v Commission | C-494/11P | 15/06/2012 | Competition                              | Equality         | Non-discrimination  | N |
| 32. Arango Jaramillo and Others v EIB                            | T-234/11P | 19/06/2012 | Employment - EU Civil Service (appeal)   | Justice          | Right to an effective remedy and to a fair trial  | N |
| 33. Susisalo and Others  | C-84/11   | 21/06/2012 | Freedom of establishment - public health | Solidarity       | Health care   | N |
| 34. ANGED  | C-78/11   | 21/06/2012 | Employment                               | Solidarity       | Fair and just working conditions  | N |
| 35. Bolloré v Commission   | T-372/10  | 27/06/2012 | Competition                              | Justice          | Right to good administration / Right to an effective remedy and to a fair trial / Principles of legality and proportionality of criminal offences and penalties | N |
| 36. Erny   | C-172/11  | 28/06/2012 | Discrimination - employment              | Solidarity       | Right of collective bargaining and action   | N |

|                                       |             |            |  |                          |   |   |
|---------------------------------------|-------------|------------|--|--------------------------|---|---|
| 37. Caronna                           | C-7/11      | 28/06/2012 | Wholesale distribution of medicines                | Justice                  | Principles of legality and proportionality of criminal offences and penalties     | N |
| 38. Hörnfeldt                         | C-141/11    | 05/07/2012 | Discrimination - employment                        | Freedoms                 | Freedom to choose an occupation and right to engage in work                       | N |
| 39. Al v Court of Justice             | F-85/10     | 11/07/2012 | Employment - EU Civil Service Tribunal             | Citizens' rights         | Right to good administration  | N |
| 40. Mugraby v Council and Commission  | C-581/11    | 12/07/2012 | Fundamental rights                                 | Justice                  | Right to an effective remedy  | N |
| 41. Arango Jaramillo and Others v EIB | C-334/12 RX | 12/07/2012 | Employment - EU Civil Service (decision to review) | Justice                  | Right to an effective remedy  | N |
| 42. Commission v Nanopoulos           | T-308/10 P  | 12/07/2012 | Employment - EU Civil Service (appeal)             | Justice                  | Presumption of innocence and right of defence                                     | N |
| 43. BG v Ombudsman                    | F-54/11     | 17/07/2012 | Employment - EU Civil Service Tribunal             | Equality                 | Equality between women and men / Right to an effective remedy and to a fair trial | N |
| 44. Dülger                            | C-451/11    | 19/07/2012 | Legal migration                                    | Freedoms                 | Respect for private and family life   | N |
| 45. Parliament v Council              | C-130/10    | 19/07/2012 | Common foreign and security policy - terrorism     | VII - General provisions | Field of application  | Y |

|                                     |   |            |   |                  |  |   |
|-------------------------------------|---|------------|---|------------------|--|---|
| 46. Akhras v Council                | C-110/12 P (R)  | 19/07/2012 | Common foreign and security policy - restrictive measures against individuals | Justice          | Right to an effective remedy   | N |
| 47. Y and Z                         | C-71/11   | 05/09/2012 | Refugees - freedom of religion  | Freedoms         | Freedom of thought, conscience and religion  | Y |
| 48. Trade Agency                    | C-619/10  | 06/09/2012 | Judicial cooperation in civil matters   | Justice          | Right to a fair trial  | N |
| 49. Deutsches Weintor               | C-544/10  | 06/09/2012 | Consumer protection - public health   | Solidarity       | Health care  | N |
| 50. Cuallado Martorell v Commission | F-96/09   | 18/09/2012 | EU Civil Service - EPSO concours  | Citizens' rights | Right to good administration / Right of access to documents / Right to an effective remedy and to a fair trial | N |
| 51. Fraas v OHIM                    | T-326/10, T-327/10, T-328/10, T-329/11, T-26/11, T-31/11, T-50/11, T-231/11 | 19/09/2012 | Intellectual property   | Citizens' rights | Right to good administration   | N |
| 52. Poland v Commission             | T-333/09  | 20/09/2012 | Agriculture   | Equality         | Non-discrimination   | N |
| 53. Bermejo Garde v EESC            | F-41/10   | 25/09/2012 | Employment - EU Civil Service Tribunal  | Solidarity       | Fair and just working conditions / Right to good   | N |



|  |          |            |   |                  |  |   |
|--|----------|------------|---|------------------|--|---|
|  |          |            |   |                  | administration   |   |
| 54. Cimade and GISTI   | C-179/11 | 27/09/2012 | Asylum  | Dignity          | Human dignity  | N |
| 55. Shell Petroleum and Others v Commission                  | T-343/06 | 27/09/2012 | Competition   | Citizens' rights | Right to good administration / Right to an effective remedy and to a fair trial                  | N |
| 56. Koninklijke Wegenbou w Stevin v Commission               | T-357/06 | 27/09/2012 | Competition   | Justice          | Right to an effective remedy and to a fair trial / Presumption of innocence and right of defence | N |
| 57. Heijmans v Commission                                    | T-360/06 | 27/09/2012 | Competition   | Justice          | Presumption of innocence and right of defence  | N |
| 58. Applied Microengineering v Commission                    | T-387/09 | 27/09/2012 | Relations between EU Institutions and third party contractors | Citizens' rights | Right to good administration   | N |
| 59. Technimed v OHMI - Ecobrand (ZAPPER-CLICK)               | T-360710 | 03/10/2012 | Intellectual property   | Justice          | Right to an effective remedy   | N |
| 60. Sviluppo Globale v Commission                            | T-183/10 | 10/10/2012 | Public service procurement - competitive tenders              | Citizens' rights | Right to good administration / Right to an effective remedy and to a fair trial                  | N |
| 61. Shanghai Biaowu High-Tensile Fastener and Shanghai Prime | T-170/09 | 10/10/2012 | Dumping   | Citizens' rights | Right to good administration   | N |

|                                     |              |            |   |                          |  |   |  |
|-------------------------------------|--------------|------------|---|--------------------------|--|---|--|
| Machinery v Council                 |              |            |   |                          |  |   |  |
| 62. Commission v Austria            | C-614/10     | 16/10/2012 | Data protection   | Freedoms                 | Protection of personal data  | Y |  |
| 63. Fondation IDIAP v Commission    | T-286/10     | 17/10/2012 | Relations between EU Institutions and third party contractors | Justice                  | Right to a fair trial  | N |  |
| 64. Strack v Commission             | F-44/05 RENV | 23/10/2012 | Employment - EU Civil Service Tribunal                        | Justice                  | Freedom of expression and information / Right to an effective remedy and to a fair trial | N |  |
| 65. Otis and Others                 | C-199/11     | 06/11/2012 | Competition   | Justice                  | Right to an effective remedy   | Y |  |
| 66. Iida                            | C-40/11      | 08/11/2012 | Citizenship of the Union - Fundamental rights                 | VII - General provisions | Field of application   | N |  |
| 67. Heimann                         | C-229/11     | 08/11/2012 | Employment  | Solidarity               | Fair and just working conditions   | N |  |
| 68. Commission v Strack             | T-268/11 P   | 08/11/2012 | Employment - EU Civil Service (appeal)                        | Solidarity               | Fair and just working conditions   | N |  |
| 69. Nexans v Commission             | T-135/09     | 14/11/2012 | Competition   | Freedoms                 | Respect for private and family life  | N |  |
| 70. Bericap                         | C-180/11     | 15/11/2012 | Intellectual property   | Freedoms                 | Right to property  | N |  |
| 71. Corpul Național al Polițiștilor | C-369/12     | 15/11/2012 | Employment  | VII - General provisions | Field of application   | N |  |
| 72. M.M.                            | C-277/11     | 22/11/2012 | Asylum  | Justice                  | Right of defence   | N |  |

|   |                       |            |   |                  |  |            |
|---|-----------------------|------------|---|------------------|--|------------|
| 73. E.ON Energie                        | C-89/11 P             | 22/11/2012 | Competition                                   | Justice          | Presumption of innocence   | N          |
| 74. Pringle v Ireland                   | C-370/12              | 27/11/2012 | Economic and monetary policy                  | Justice          | Right to an effective remedy   | Full Court |
| 75. Italy v Commission                  | C-566/10 P            | 27/11/2012 | EU Civil Service - EPSO concours              | Equality         | Non-discrimination   | Y          |
| 76. Sipos v OHIM                        | F-59/11               | 27/11/2012 | Employment - EU Civil Service Tribunal        | Solidarity       | Protection in the event of unjustified dismissal   | N          |
| 77. Thesing and Bloomberg Finance v ECB | T-590/10              | 29/11/2012 | Access to documents                           | Citizens' rights | Right of access to documents / Freedom of expression and information / Scope and interpretation of rights and principles | N          |
| 78. O and S                             | C-356/11 and C-357/11 | 06/12/2012 | Citizenship of the Union - Fundamental rights | Equality         | Respect for private and family life / Rights of the child  | N          |
| 79. Trentea v FRA                       | F-112/10              | 11/12/2012 | Employment - EU Civil Service Tribunal        | Citizens' rights | Right to good administration   | N          |
| 80. Almamet v Commission                | T-410/09              | 12/12/2012 | Competition                                   | Justice          | Presumption of innocence and right of defence / Respect for private and family life                                      | N          |
| 81. Cerafogli v ECB                     | F-43/10               | 12/12/2012 | Employment - EU Civil Service Tribunal        | Citizens' rights | Right to good administration   | N          |

|                                      |                           |            |  |                  |  |   |
|--------------------------------------|---------------------------|------------|--|------------------|--|---|
| 82. Commission v Strack              | T-197/11 P and T-198/11 P | 13/12/2012 | Employment - EU Civil Service (appeal) | Justice          | Right to an effective remedy and to a fair trial | N |
| 83. Strack v Commission              | T-199/11 P                | 13/12/2012 | Employment - EU Civil Service (appeal) | Justice          | Right to an effective remedy and to a fair trial | N |
| 84. Greece v Commission              | T-588/10                  | 13/12/2012 | Agriculture                            | Citizens' rights | Right to good administration                     | N |
| 85. AX v ECB                         | F-7/11                    | 13/12/2012 | Employment - EU Civil Service Tribunal | Citizens' rights | Right to good administration                     | N |
| 86. Alder and Alder                  | C-325/11                  | 19/12/2012 | Judicial cooperation in civil matters  | Justice          | Right to an effective remedy and to a fair trial | N |
| 87. Abed El Karem El Kott and Others | C-364/11                  | 19/12/2012 | Asylum                                 | Freedoms         | Right to asylum                                  | Y |

## Appendix II

### Overview of the applications for preliminary rulings submitted in 2012 which refer to the Charter:

| Case     | Date       | Name of the parties                                     | Charter subject and articles referred to in the application                     | Relevant title of the Charter | Nationality of the referring court |
|----------|------------|---|---|-------------------------------|------------------------------------|
| C-23/12  | 17/01/2012 | Zakaria   | Right to an effective remedy and to a fair trial (Art. 47)                      | Justice                       | LV                                 |
| C-30/12  | 23/01/2012 | Marcinová   | Consumer protection (Art. 38 combined with 17)                                  | Solidarity                    | SK                                 |
| C-45/12  | 30/01/2012 | ONAFTS  | Non-discrimination (Art. 20 and 21)   | Equality                      | BE                                 |
| C-87/12  | 20/02/2012 | Ymeraga and Others                                      | Non-discrimination / Rights of the child (Art. 20, 21, 24, 33, 34)              | Equality                      | LU                                 |
| C-86/12  | 20/02/2012 | Alopka and Others                                       | Non-discrimination / Rights of the child (Art. 20, 21, 24, 33, 34)              | Equality                      | LU                                 |
| C-93/12  | 21/02/2012 | „Agrokonsulting”  | Right to an effective remedy and to a fair trial (Art. 47)                      | Justice                       | BG                                 |
| C-128/12 | 08/03/2012 | Sindicato dos Bancários do Norte and Others             | Fair and just working conditions (Art. 31.1)                                    | Solidarity                    | PT                                 |
| C-131/12 | 09/03/2012 | Google Spain and Google                                 | Protection of personal data (Art. 8)  | Freedoms                      | ES                                 |
| C-134/12 | 12/03/2012 | Corpul Național al Polițiștilor                         | Right to property (Art. 17.1, 20, 21)   | Freedoms                      | RO                                 |
| C-141/12 | 20/03/2012 | Y.S.  | Right of access to data (Art. 8.2, 41.2.b)                                      | Freedoms                      | NL                                 |
| C-156/12 | 30/03/2012 | GREP  | Right to an effective remedy and to a fair trial (Art. 47, 51.1)                | Justice                       | AT                                 |
| C-176/12 | 16/04/2012 | Association de médiation sociale                        | Workers' right to information and consultation within the undertaking (Art. 27) | Solidarity                    | FR                                 |
| C-180/12 | 16/04/2012 | Stoilov i Ko  | Right to good administration (Art. 41.2.a, 47)                                  | Citizens' rights              | BG                                 |
| C-195/12 | 26/04/2012 | I.B.V & Cie   | Non-discrimination (Art. 20, 21)  | Equality                      | BE                                 |
| C-234/12 | 14/05/2012 | Sky Italia  | Freedom of expression and information (Art. 11)                                 | Freedoms                      | IT                                 |
| C-233/12 | 14/05/2012 | Gardella  | Freedom to choose an occupation and right to engage in work (Art. 15)           | Freedoms                      | IT                                 |
| C-264/12 | 29/05/2012 | Sindicato Nacional dos Profissionais de Seguros e Afins | Fair and just working conditions (Art. 31.1)                                    | Solidarity                    | PT                                 |

|          |            |  |  |                  |    |
|----------|------------|--|--|------------------|----|
| C-293/12 | 11/06/2012 | Digital Rights Ireland                                       | Protection of personal data / Freedom of expression and information (Art. 7, 8, 11, 41)  | Freedoms         | IE |
| C-311/12 | 27/06/2012 | Kassner  | Fair and just working conditions (Art. 31)   | Solidarity       | DE |
| C-312/12 | 28/06/2012 | Ajdini   | Non-discrimination / Integration of persons with disabilities (Art.20, 21, 26)   | Equality         | BE |
| C-313/12 | 28/06/2012 | Romeo  | Right to good administration (Art. 41.2.c)   | Citizens' rights | IT |
| C-356/12 | 27/07/2012 | Glatzel  | Non-discrimination (Art. 20, 21, 26)   | Equality         | DE |
| C-363/12 | 30/07/2012 | Z  | Non-discrimination / Integration of persons with disabilities / Family and professional life (Art. 21, 23, 33, 34; 21, 26, 34) | Equality         | IE |
| C-361/12 | 31/07/2012 | Carratù  | Right to an effective remedy and to a fair trial (Art. 46, 47, 52.3)   | Justice          | IT |
| C-367/12 | 01/08/2012 | Prinz-Stremitzer and Sokoll-Seebacher                        | Freedom to conduct a business (Art. 16, 47)  | Freedoms         | AT |
| C-369/12 | 02/08/2012 | Corpul Național al Polițiștilor                              | Right to property / Non-discrimination (Art. 51.1 combined with 20; 51.1 combined with 21.1; 17.1)                             | Freedoms         | RO |
| C-372/12 | 03/08/2012 | M. and S.  | Right of access to data (Art. 8.2, 41.2.b, 51.1)   | Freedoms         | NL |
| C-370/12 | 03/08/2012 | Pringle  | Right to an effective remedy and to a fair trial (Art. 47)   | Justice          | IE |
| C-373/12 | 03/08/2012 | G.I.C. Cash  | Right to an effective remedy and to a fair trial (Art. 47 combined with 38)  | Justice          | SK |
| C-390/12 | 20/08/2012 | Pfleger and Others   | Freedom to choose an occupation and right to engage in work / Right to property (Art. 15, 16, 17, 47, 50)                      | Freedoms         | AT |
| C-413/12 | 11/09/2012 | Asociación de Consumidores Independientes de Castilla y León | Consumer protection (Art. 38)  | Solidarity       | ES |
| C-429/12 | 21/09/2012 | Pohl   | Non-discrimination (Art. 20)   | Equality         | AT |
| C-446/12 | 03/10/2012 | Willems  | Protection of personal data / Respect for private and family life (Art. 7, 8)  | Freedoms         | NL |
| C-447/12 | 05/10/2012 | Kooistra   | Protection of personal data / Respect for private and family life (Art. 7, 8)  | Freedoms         | NL |
| C-451/12 | 08/10/2012 | Esteban García   | Consumer protection (Art. 38)  | Solidarity       | ES |
| C-448/12 | 08/10/2012 | Roest  | Protection of personal data / Respect for private and family life (Art. 7, 8)  | Freedoms         | NL |

|          |            |   |   |            |    |
|----------|------------|---|---|------------|----|
| C-449/12 | 08/10/2012 | van Luijk                                     | Protection of personal data / Respect for private and family life (Art. 7, 8)                                   | Freedoms   | NL |
| C-476/12 | 24/10/2012 | Österreichischer Gewerkschaftsbund            | Right of collective bargaining and action / Non-discrimination (Art. 28)  | Solidarity | AT |
| C-483/12 | 29/10/2012 | Pelckmans Turnhout                            | Non-discrimination / Right to property / Freedom to conduct a business (Art. 20 and 21 combined with 15 and 16) | Freedoms   | BE |
| C-497/12 | 07/11/2012 | Gullotta and Farmacia di Gullotta Davide & C. | Right to property (Art. 15)   | Freedoms   | IT |
| C-498/12 | 07/11/2012 | Pedone  | Right to an effective remedy and to a fair trial - Legal aid (Art. 47.3)  | Justice    | IT |
| C-499/12 | 07/11/2012 | Gentile                                       | Right to an effective remedy and to a fair trial - Legal aid (Art. 47.3)  | Justice    | IT |
| C-523/12 | 19/11/2012 | Dirextra Alta<br>Formazione Srl               | Freedom of expression and information / Right to education (Art. 11, 14)  | Freedoms   | IT |
| C-555/12 | 03/12/2012 | Loreti and Others                             | Right to an effective remedy and to a fair trial (Art. 47, 52.3)  | Justice    | IT |
| C-562/12 | 05/12/2012 | Liivimaa Lihaveis                             | Right to an effective remedy and to a fair trial (Art. 47)  | Justice    | EE |