

# The EU Charter as a Catalyst for Environmental Action: Spotlighting Articles 37 and 47

Vojtěch VOMÁČKA

## ABSTRACT

The Charter of Fundamental Rights of the European Union has emerged as a powerful instrument for environmental protection within the bloc. This chapter delves into the Charter's relevance in this domain, analysing its impact beyond mere legal pronouncements. It explores how the Charter elevates environmental considerations to a core principle within the EU (Article 37), empowering individuals and organisations to champion a healthy planet (Article 47). The chapter examines how the Charter's emphasis on continuous improvement drives the development of ambitious environmental goals and fosters a legal landscape where environmental protection remains a top priority. It further analyses the Charter's interplay with existing EU environmental legislation, highlighting its role in ensuring a robust and unified approach to environmental safeguards. Finally, the relationship between the EU Charter and the European Convention on Human Rights (ECHR) is considered, exploring both convergence and divergence in their approaches to environmental protection and fair trial rights.

## KEYWORDS

EU Charter, Human Rights, Environmental Protection, Access to Justice, Aarhus Convention, Treaty on the Functioning of the European Union

## 1. Introduction

In this era of increasing environmental challenges, the European Union's legal framework has progressively strengthened its commitment to ecological preservation. Central to this evolution is the Charter of Fundamental Rights of the European Union (EU Charter),<sup>1</sup> which has emerged as a pivotal instrument for environmental protection within the bloc. This chapter thoroughly examines the Charter's profound relevance, moving beyond mere declaratory statements to analyse its active impact on environmental governance. It specifically investigates how the EU Charter elevates

1 European Union, 2012a, pp. 391–407.

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environmental considerations to a foundational principle (Article 37) and simultaneously empowers individuals and organisations to advocate for a healthy planet through legal recourse (Article 47).

The analysis further explores how the Charter's inherent emphasis on continuous improvement not only propels the pursuit of ambitious environmental objectives but also cultivates a dynamic legal environment where safeguarding the environment remains of paramount concern. Additionally, the chapter meticulously assesses the Charter's symbiotic relationship with existing EU environmental legislation, underscoring its crucial role in fostering a coherent and comprehensive approach to environmental safeguards across the Union.

Finally, a critical examination of the interface between the EU Charter and the European Convention on Human Rights (ECHR) is conducted to identify areas of both congruence and divergence in their respective frameworks for environmental protection and fundamental fair trial rights. This exploration is predominantly grounded in the extensive case law of the Court of Justice of the European Union (CJEU), offering both a systematic overview of seminal judgments and a robust foundation for future scholarly enquiries.

## 2. Evolution and Importance of the EU Charter

The express reference to human rights was absent from the Community treaties. However, the European Union (EU) has traditionally rooted its human rights obligations within its own legal order. This approach was reflected in the ancient case law<sup>2</sup> and the preamble to the 1986 Single European Act. Besides being protected as *Community* concepts arising within the EU system itself, human rights have been further recognised by Article 6 of the Treaty on the European Union (TEU)<sup>3</sup> and the EU Charter, which came into force in December 2009, along with the Treaty of Lisbon.<sup>4</sup> The EU Charter not only overshadowed questions about whether the EU needed a human rights policy but also became the centrepiece of the EU constitutionalisation process.<sup>5</sup>

On cursory examination, the significance of the EU Charter in the realm of environmental protection may not be readily apparent. Only Article 37 directly addresses 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.'<sup>6</sup> The EU Charter does not establish any new powers for the Union.<sup>6</sup> However, its

2 See the judgments of the Court of Justice of the European Union, 1969; 1970; 1974.

3 European Union, 2012b, pp. 47–390.

4 See: von Bogdandy, 2000.

5 Eeckhout, 2002, p. 945.

6 See: Court of Justice of the European Union, 2014a, para. 42; European Union, 2012a, Art. 51(2); European Union, 2012b, Art. 6(1).

significance transcends mere legal pronouncements, acting as a catalyst for ambitious environmental policies. In this respect, the EU Charter fulfils the expectation that it would serve to extend the influence of European law and policy, or at least serve as a source of inspiration for further EU action.<sup>7</sup>

Moreover, the EU Charter has evolved into a potent instrument that wields influence through procedural means to safeguard the EU environment. This initial subtlety can be attributed to the multifaceted nature of the EU Charter's impact. While it may not explicitly dedicate entire chapters to environmental concerns, its overarching principles and specific articles, particularly Article 47, subtly yet profoundly permeate environmental decision-making and legal frameworks across the EU. This substantive influence elevates environmental considerations from peripheral concerns to core principles guiding EU policies and legislation. Article 47 of the EU Charter guarantees the right to an effective remedy and a fair trial. This is essential to environmental litigation and, in a wider context, to the enforcement of EU environmental law. This allows individuals to seek redress through the courts, fostering a legal landscape in which environmental protection can be actively championed. It states that:

'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 link between Articles 37 and 47 of the EU Charter strengthened over time, reflecting environmental threats. Eckes pointed out that justice plays a prominent role in the EU climate-change debate. Supported by the value-guided language in Article 37 of the EU Charter and EU Treaties, the EU has been successful in phrasing climate change as an issue of human rights and justice.<sup>8</sup>

Similarly, to underline the importance of Article 37 of the EU Charter, Humblet and Duggal<sup>9</sup> conclude that, by virtue of this article, the EU has elevated environmental protection to the level of constitutionality.

Consequently, environmental concerns have played a critical role in investor-state arbitration, and Article 37 of the EU Charter might be a viable defence for Member States that adopt climate change and environmental measures. Such a defence would not consist of a jurisdictional challenge,<sup>10</sup> but of a defence based on the applicable law which protects the notion of sustainable investment enshrined in the applicable international investment agreement. Article 37 of the EU Charter could, therefore, operate as a powerful tool to foster environmental protection in investor-state

7 See: Betten 2001.

8 Eckes, 2012, p. 16.

9 Humblet and Duggal, 2020.

10 Based on the Court of Justice of the European Union, 2018.

disputes and, therefore, address a prolific complaint in the backlash against investor-state arbitration.

### 3. Character and Scope of the EU Charter

The EU Charter does not characterise individual articles as being constitutive of rights, principles, or both. However, it distinguishes between principles and rights, as is apparent, for example, in the second sentence of Article 51(1), and in Articles 52(2) and (5) thereof. Such a characterisation is incumbent upon future jurisprudence that shall also consider the directions found in the explanations.

The explanations relating to the Charter of Fundamental Rights, which, according to Article 52(7) thereof ‘shall be given due regard by the Courts of the Union’, provide, with regard to Article 52(5) of the EU Charter, that the principles may be implemented through legislative or executive acts adopted by the EU in accordance with its powers, and by the Member States only when they implement EU law. Accordingly, those principles become significant for the courts only when such acts are interpreted or reviewed, but, conversely, do not give rise to direct claims for positive action by the EU institutions or Member States’ authorities. This seems consistent with both the case law of the CJEU and the approach of the Member States’ constitutional systems to principles.

The EU Charter principles differ from the EU Charter rights in nature: they are non-relational and not inter-subjective; they contain mere duties without corresponding claim rights. This has consequences for their justiciability, which the EU Charter limits.<sup>11</sup> This is an important aspect to consider in further analysis of the EU Charter’s content.

With regard to Article 47 of the EU Charter, it is settled case law that the provision is not intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to the admissibility of direct actions brought before the Courts of the EU. This is apparent from the explanation referring to that article, which must, in accordance with the third subparagraph of Article 6(1) of the TEU and Article 52(7) of the EU Charter, be considered for the interpretation of the EU Charter.<sup>12</sup>

Things get even more complicated, as the scope of application of the EU Charter is a multifaceted and dynamic legal landscape. Three fundamental systems of rights protection apply to Member States: their own national system of human rights protection, the ECHR, and the EU Charter. Determining when and how the EU Charter applies necessitates a careful analysis that intertwines the elements of EU law, national legislation, and the specific factual circumstances of individual cases.

<sup>11</sup> See: Lock, 2019.

<sup>12</sup> See the judgments of the Court of Justice of the European Union 2013a, para. 42; 2013b, para. 32; 2013c, para. 97.

At its heart, Article 51(1) of the EU Charter provides the guiding principle: The provisions of the Charter are addressed to the institutions of the EU and to its Member States ‘when they are implementing Union law’. This establishes a fundamental link: the implementation of EU law acts as the key to unlocking the EU Charter’s applicability. However, delineating the precise contours of this principle requires a nuanced, contextual approach.

The CJEU plays a pivotal role in shaping the scope of the EU Charter. Through its case law, the CJEU has elaborated on the concept of implementing Union law, casting a wider net than a literal interpretation might suggest. The Court has held that Member States can be seen as implementing EU law not only when directly transposing EU Directives into national law, but also in situations where their actions fall broadly within the scope of EU law or affect areas covered by EU rules. This expansive interpretation underscores the fact that the EU Charter’s reach extends beyond mere compliance with specific EU directives and regulations. It encompasses a broad range of actions by which Member States interact and operate within the framework of EU law.

Nevertheless, the fact that an area falls within the potential competence of the EU—that is, within the shared competence where the EU can potentially legislate—does not suffice for the application of the EU Charter or general principles of law.

Notably, in Case C-617/10 (*Åkerberg Fransson*),<sup>13</sup> the CJEU added a *conciliation* clause. It held that, where a national court reviews the compatibility with fundamental rights of a national measure which implements EU law but does so in a situation where national action is not entirely determined by the latter, the national court remains free to apply national standards of protection. This occurs on the condition that the level of protection provided by the EU Charter and the primacy, unity, and effectiveness of EU law are not compromised. In a later Case C-176/12 (*Association de médiation sociale*),<sup>14</sup> the CJEU confirmed that the fundamental rights guaranteed in the legal order of the EU are applicable in all situations governed by EU law without distinguishing among the various sources of rights provided for in Article 6 TEU.

However, there are limitations to the EU Charter’s scope. Member States acting wholly outside the realm of EU law fall outside its ambit. Purely national situations, lacking any nexus to EU legislation or the broader aims of the EU, generally have no recourse within the EU Charter’s principles. Furthermore, the EU Charter primarily safeguards rights against governmental and public bodies, and is generally not directly applicable to disputes between private individuals.

To provide an example of environmental protection, in Case C-206/13 (*Siragusa*),<sup>15</sup> the CJEU elucidates the rules when a measure would be considered to fall within the scope of the EU Charter. Mr Siragusa was required to dismantle a building on the grounds that it had been built in breach of Italian law, protecting its cultural heritage

<sup>13</sup> Court of Justice of the European Union, 2013d.

<sup>14</sup> Court of Justice of the European Union, 2014b.

<sup>15</sup> Court of Justice of the European Union, 2014c.

and landscape. The referring court raised the question of whether the rigidity of Italian law was compatible with the right to property as guaranteed by the EU Charter, referring to the Aarhus Convention and several provisions of EU environmental law. None of these, however, appeared to have any link with the facts of the case or the decision of the Italian authorities to order demolition. The CJEU accepted that there was a connection between the proceedings and EU environmental law because protection of the landscape is an aspect of environmental protection. It held, however, that the concept of implementing EU law under Article 51 of the EU Charter requires 'a certain degree of connection above and beyond the matters covered being closely related or one of those matters having an indirect impact on the other'.<sup>16</sup>

To determine whether a national measure implements EU law, the Court will consider, *inter alia*, the following factors: whether the measure intends to implement an EU law provision, the nature of the measure, whether it pursues objectives distinct from those covered by EU law (even if capable of indirectly affecting EU law), and the existence of specific EU rules governing the matter or capable of influencing it.<sup>17</sup>

The CJEU also reiterated that the scope of the application of the general principles was the same as that of the EU Charter. After finding that the Italian measure did not fall within the scope of the application of EU law, it was followed by the same token that the CJEU did not have the jurisdiction to apply the principle of proportionality.<sup>18</sup>

Similarly, in Case C-339/10 (*Asparuhov Estov*),<sup>19</sup> the CJEU declined jurisdiction to answer the preliminary question of the lack of jurisdiction. The applicants challenged the national legislation which precluded them from contesting a ministerial decision concerning town planning, arguing for its incompatibility with Article 47 of the EU Charter, which guaranteed the right to an effective remedy. The CJEU recalled that, under the EU Charter and established case law, fundamental rights are binding upon Member States whenever they implement European Union law. It also reiterates that the EU Charter does not establish any new power for the Union, nor does it modify the Union's existing powers. Given that the order for reference did not contain any specific information to show that the contested ministerial decision would constitute a measure implementing EU law, 'or would be connected in any other way'<sup>20</sup> with EU law, the CJEU could not provide the answer.

In summary, while a considerable degree of uncertainty persists, the test applied by the CJEU appears to be predominantly objectives- and effects-based. National legislation will fall within the scope of the EU Charter if it pursues objectives analogous to those pursued by EU law, provided that the EU objectives are sufficiently specified. Furthermore, a national measure falls within the scope of EU law if it affects EU provisions with sufficient directness. The mere fact that national legislation falls within an area of potentially shared competence is insufficient to trigger the application of

16 Court of Justice of the European Union, 2014c, para. 24

17 Court of Justice of the European Union, 2014c, para. 25.

18 Court of Justice of the European Union, 2014c, para. 35.

19 Court of Justice of the European Union, 2010a.

20 Court of Justice of the European Union, 2010a, para. 14.

EU standards. Moreover, the measure falls within the scope of EU law if it sufficiently and directly affects EU dispositions.

Notably, the scope of the EU Charter is not static. Its application continually evolves in tandem with the expanding reach of EU Law. As the EU delves into new policy areas and strengthens its presence within existing domains, the potential to invoke the Charter expands commensurately. This adaptability ensures that the EU Charter remains a relevant and potent instrument as the EU itself undergoes transformation, particularly towards sustainable development and a circular economy.

Furthermore, Article 52(2) of the EU Charter provides that the rights recognised by the EU Charter for which provisions are made in the Treaties are to be exercised under the conditions and within the limits defined by those Treaties. This is the case with Article 37 of the Charter, which is based on Article 3(3) TEU and Articles 11 and 191 TFEU (see below).

Article 53 of the EU Charter then suggests that the EU Charter shall not adversely affect the rights contained in national constitutions, EU law, and international treaty law ‘recognised in their respective fields of application’. The Charter, therefore, establishes a minimum standard of rights protection while retaining all higher existing standards. As for international human rights treaties, the minimum guarantee is restricted to treaties to which the Union, the Community or all the Member States are parties. This is particularly important for the judicial protection of environmental matters guaranteed by the Aarhus Convention. All Member States and the EU are parties to the Aarhus Convention, which provides more detailed provisions than the EU Charter regarding the scope, effectiveness, and timeliness of the judicial review (see below).

#### **4. Relationship with the ECHR Regime**

The EU Charter is, if not a child, then at least a godchild of Germany. Due to the sole efforts of the German government, the consolidation of the protection of fundamental rights within the EU was placed on the European Council’s agenda.<sup>21</sup> Simultaneously, the EU Charter was inspired by and drafted based on the ECHR, with the clear aim that the two regimes would eventually merge into one European human rights standard. Although that has not happened, the EU Charter and the ECHR form a twin constellation, safeguarding fundamental rights within the European legal firmament.

The ECHR plays a significant role in the development of Community rights. In its interpretation, the CJEU frequently refers to the provisions of the ECHR, although recourse to other treaties has not been precluded. The particular significance afforded to the ECHR represents a positive step in the EU’s acknowledgement of the relevance of human rights principles external to the EU system for developments within it. Nevertheless, the EU is not obligated to adhere strictly to the ECHR text or case law

21 Besselink, 2001, p. 68.

of the European Court of Human Rights (ECtHR). The incorporation of any specific right as one of the general principles of EU Law occurs on a case-by-case basis. From the CJEU's standpoint, it is apparent that aside from the ECHR, other international human rights treaties have not been accorded substantial weight. Moreover, such treaties are regarded merely as useful guides for human rights protection within the EU rather than being directly legally binding upon its institutions.<sup>22</sup>

The function of the EU Charter is not to enable the harmonisation of the systems of protection of the fundamental rights of Member States. It does not establish a minimum standard that is generally applicable to Member States, like the ECHR does. The EU Charter has not been elaborated on by the necessity to create such a standard, but rather by a genuine demand for a uniform application of EU law.<sup>23</sup> At its core, the EU Charter was designed to bolster and consolidate the protection of fundamental rights of individuals within the Union's unique legal context. In contrast, the ECHR stems from the Council of Europe, a broader international organisation encompassing a wider geographical reach.

Nevertheless, the relationship between the EU Charter and the ECHR is one of synergy and subtle distinction, particularly when considering environmental protection and fair trial rights. As previously noted, the CJEU frequently refers to ECtHR case law. However, Article 37 of the EU Charter is referred to in the separate opinion of Judge Costa in the famous ECtHR case *Hatton and Others v. UK* (Heathrow night flights):

‘Since the beginning of the 1970s, the world has become increasingly aware of the importance of environmental issues and of their influence on people’s lives. Our Court’s case-law has, moreover, not been alone in developing along those lines. For example, Article 37 of the Charter of Fundamental Rights of the European Union of 18 December 2000 is devoted to the protection of the environment. I would find it regrettable if the constructive efforts made by our Court were to suffer a setback.’<sup>24</sup>

Both instruments support environmental protection, albeit in completely different ways. Article 37 of the EU Charter sets lofty policy goals for high-level environmental protection and continuous improvement. Through Article 8 (the right to private and family life), the ECHR offers environmental protections to affected individuals and environmental NGOs. However, the ECtHR often takes a more reactive approach, focusing on preventing environmental harm that disrupts individual well-being. This divergence stems from the different objectives of both Charters. The EU Charter is intrinsically linked to the EU's economic and social integration projects, which allow for ambitious environmental policies. The broader scope of the ECHR necessitates a

22 See: Ahmed and Butler, 2006, p. 773.

23 See: Van Danwitz and Paraschas, 2017, p. 411.

24 European Court of Human Rights, 2001.

more measured approach to ensure a baseline for environmental protection across diverse legal systems.

The right to an effective remedy and fair trial, enshrined in Article 47 of the EU Charter, has a strong counterpart to Article 6 of the ECHR. Both the instruments guarantee impartial hearings, access to legal counsel, and the presumption of innocence. The ECtHR has established a rich body of jurisprudence to interpret Article 6, which informs the EU Charter.

The EU Charter and the ECHR do not compete, but rather engage in constructive dialogue. Article 52(3) of the EU Charter mandates that when providing similar safeguards, the level of protection under the Charter must never fall below that guaranteed by the ECHR. This established a dynamic ratcheting effect, pushing for ever-higher standards of rights protection across Europe. In principle, the EU Charter should not lead to divergence from the ECHR and Strasbourg case law.

Notable differences emerge in practical application. The scope of the EU Charter is limited to situations in which EU law has been implicated. The ECHR has a broader reach, potentially applying to any alleged breach of human rights within the Council of European member states. This distinction can have significant implications for individuals who seek to enforce procedural rights across diverse legal contexts.

Therefore, the relationship between the EU Charter and the ECHR can be characterised by both convergence and subtle divergences. While the fundamental principles espoused by Articles 37 and 47 of the EU Charter are echoed in both instruments, the ambitious environmental objectives enshrined in the EU Charter contrast with the ECHR's indirect and reactive approach. Similarly, the shared commitment to due process rights is subject to varying jurisdictional scopes of application. Ultimately, both instruments act in harmony to form a formidable bulwark for fundamental rights protection within Europe, and their unique characteristics shape the complex, nuanced, and ever-evolving legal landscape.

## **5. Article 37 of the EU Charter: A Cornerstone of Environmental Protection in the European Union**

Nestled within Title IV of the EU Charter, Article 37 stands as a cornerstone principle proclaiming a lofty and inestimable objective: the integration of a high level of environmental protection and the unceasing improvement of environmental quality. According to the CJEU, Article 37 of the EU Charter reaffirms the transversal and fundamental nature of the objective to consider environmental protection in defining and implementing EU policies and activities.<sup>25</sup>

Article 37 of the EU Charter builds on the principle established by Article 11 of the TFEU, which requires that environmental protection requirements be integrated into the definition and implementation of the Union's policies and activities, particularly

25 Court of Justice of the European Union, 2011a, para. 121.

with a view to promoting sustainable development. However, as Jans notes,<sup>26</sup> the principle of integration lost its status as a guiding principle of EU law (Articles 1–6 TFEU) in the Lisbon Treaty and became one of the ordinary integration principles.

The harmonious integration of environmental protection into other policy domains is an inevitable consequence of laws being implemented within the context of the environment. Any substantial regulation, or its absence, will invariably affect the natural world. However, the systematic and comprehensive integration of environmental protection is indispensable for achieving sustainable development and shifting environmental policymaking from the traditional antagonistic model to a new cooperative model.<sup>27</sup> In this regard, a profound connection exists between Article 37 of the Charter and Article 3 of the TEU, both of which underscore the paramount importance of sustainable development.

Article 3(3) of the TEU provides that the European Union is to work in particular for a ‘high level of protection and improvement of the quality of the environment’.<sup>28</sup> According to the CJEU, Article 37 of the Charter is: ‘essentially based on Article 3(3) TEU and Articles 11 and 191 TFEU.’<sup>29</sup>

Secondary EU environmental legislation ‘comes within the framework provided for both in Article 3 TEU and in Article 37 of the Charter, provisions according to which, in essence, the European Union is to work for sustainable development and ensure a high level of protection of the environment’.<sup>30</sup>

Simultaneously, Article 37 of the EU Charter confirms the ambitions of the EU to achieve the high level of environmental protection embodied in Article 191(2) of the TFEU.

The wording of Article 37 of the EU Charter emphasises two pivotal elements regarding the quality of integration of environmental aspects into EU policies: a high level of environmental protection should be achieved, and the regulation should aim to improve the state of the environment. These elements are of significant importance because they signal that the mere integration of environmental protection (taking into account) is insufficient. Obviously, Article 37 of the EU Charter does not amend the individual EU policies established by the TFEU and seems to be of lower strength than such a direct amendment. Nevertheless, it serves as a far-reaching explanatory instrument.

The requirement for a high level of environmental protection follows the main aim of the environmental policy set in Article 191(2) of the TFEU (Union policy on the environment shall aim at a high level of protection) and extends this aim to other EU policies. Therefore, in principle, the ambitious character of environmental protection must be inherent in EU law regardless of the legal basis.

26 Jans, 2011, pp. 1543–1545.

27 See: Hertin and Berkhout, 2001.

28 See: Court of Justice of the European Union, 2016a, para. 42.

29 Court of Justice of the European Union, 2016a, para. 62.

30 Court of Justice of the European Union, 2021a, para. 60.

The origin of the principle of high-level environmental protection (as well as other principles) can be traced back to the Single European Act, which includes a specific chapter on the environment in the EC Treaty. The then Article 100a of Title VII obliged the Commission to base its proposals under Paragraph 1 on a *high level of protection*. A high level of protection and improvement in the quality of the environment became one of the objectives of the Community (Article 2 EC), since an environmental policy [Article 3(1)(l) EC] was inevitable.

For example, Advocate General Ruiz-Jarabo Colomer explained the practical impact of the principle of high-level environmental protection in Case C-6/03 (*Deponiezweckverband Eiterköpfe*): ‘...the attainment of a high level of protection and improvement of the quality of the environment has become one of the objectives of European integration, the achievement of which requires the development of a suitable policy (Articles 2 and 3(1)(l) EC), (21) from which it follows that the adoption of more stringent national measures must conform to Community guidelines, since it is not only specific provisions which can be incompatible but also programmes drawn up in this supranational sphere.’<sup>31</sup>

Unlike Article 191(2) of the TFEU, Article 37 of the Charter does not provide an explicit corrective which would limit the high-level protection principle. 191(2) TFEU requires taking into account the diversity of situations in the various regions. In other words, the regulations adopted in EU environmental policy must set different targets for individual Member States or their regions if the situation in the region demands them. This requirement can be derived from the principles of subsidiarity and proportionality.

The principle of a high level of protection legitimises legal regulation which, while respecting the principle of proportionality, aims for rules that are more stringent than the necessary minimum standard. The CJEU often refers to the principle of a high level of protection when EU regulations are challenged as being too strict. For example, in Case C-358/14 (*Poland v Parliament and Council*),<sup>32</sup> Poland contested an EU ban on placing tobacco products containing menthol as a characterising flavour on the market. It argued that such a measure is too strict and inappropriate for achieving the objective of human health protection. The CJEU concluded that, *inter alia*, ‘the EU legislature weighed up, on the one hand, the economic consequences of that prohibition and, on the other, the requirement to ensure, in accordance with Article 114(3) TFEU, a high level of human health protection with regard to a product which is characterised by properties that are carcinogenic, mutagenic and toxic to reproduction.’<sup>33</sup>

Furthermore, the principle of a high level of protection must be considered in decision-making, including the considerations of the judiciary. For example, the Tribunal postponed the annulment of the invalid EU Act because the annulment of

31 Court of Justice of the European Union, 2004.

32 Court of Justice of the European Union, 2016b.

33 Court of Justice of the European Union, 2016b, para. 102.

the contested decision with an immediate effect would run counter to the objectives of ensuring a high level of environmental protection. The Tribunal ruled in Case T-699/17 (*Poland v. Commission*) that: ‘the annulment of the contested decision with immediate effect would run counter to the objectives of ensuring a high level of environmental protection and the improvement of environmental quality, as provided for in Article 191(2) TFEU, in Article 37 of the Charter of Fundamental Rights of the European Union, and in recitals 2 and 44 as well as in Article 1 of Directive 2010/75, to which the contested decision contributes.’<sup>34</sup>

Nevertheless, Article 37 of the EU Charter does not provide the right to bring actions regarding environmental matters before the national courts or the CJEU, or any other rights. It ‘only contains a principle providing for a general obligation on the European Union in respect of the objectives to be pursued in the framework of its policies’.<sup>35</sup> The explanatory memorandum pertaining to Article 37, which establishes the obligation to integrate environmental considerations into EU policies and activities, states that it ‘also draws on the provisions of some national constitutions’. This constitutes the sole explicit reference to a fundamental right enshrined only within the constitutions of certain Member States. The EU Charter, however, does not go as far as to establish a right to a favourable environment.

Article 37 of the Charter is often invoked alongside other legal instruments such as EU directives and regulations, forming a strong legal framework for environmental protection in the EU. Therefore, the inscription of Article 37 into the EU Charter reflects a growing conviction within the EU that environmental protection could no longer be relegated to the periphery of European integration.

The emphasis on a high level of environmental protection under Article 37 sets a dynamic standard. It compels the EU to strive for unrelenting improvements, fostering the development of ambitious environmental goals, and the ongoing pursuit of innovative solutions. This focus on continuous progress ensures that environmental protection remains a top priority within the EU and is not a static achievement.

This approach works in the opposite way, as Article 37 of the EU Charter limits the preference of other areas to environmental protection. For example, nuclear energy sector regulations cannot oust the application of, *inter alia*, Article 37 of the EU Charter.<sup>36</sup> Accordingly, the requirement to preserve and improve the environment, expressed in both the Charter and TFEU, as well as the secondary legislation that flows from it, is applicable in the nuclear energy sector.<sup>37</sup> A practical consequence arises: When the Commission assesses whether State aid for economic activity within a particular sector satisfies the primary condition laid down in Article 107(3)(c) of the TFEU, it must verify that the activity does not contravene the relevant rules of EU environmental law. Should the Commission identify an infringement of these rules, it

34 General Court of the European Union, 2021, para. 64.

35 General Court of the European Union, 2016, para. 47.

36 Court of Justice of the European Union, 2020a, para. 100.

37 See, by analogy, the judgment of the Court of Justice of the European Union 2009, paras. 87–91.

is obliged to declare the aid incompatible with the internal market without undertaking any further examination.

Similarly, Article 37 of the EU Charter helps interpret derogatory regimes set in environmental directives in a restrictive manner. For example, in Case C-900/19 (*One Voice and Ligue pour la protection des oiseaux*),<sup>38</sup> the CJEU concluded the following regarding the protection of wild birds: ‘It follows from the wording of Article 9(1)(c) of the Birds Directive, read in the light of Article 8(1) of that directive, from the objectives of that directive and from the framework within which it falls, a framework which is based on the provisions of Article 3 TEU, of Article 37 of the Charter, of the first subparagraph of Article 191(2) TFEU and of Article 13 TFEU on animal welfare, that the condition of selectivity laid down in Article 9(1)(c) of that directive must be understood as meaning that it can be satisfied, in the case of a non-lethal method of capture leading to by-catch, only if that by-catch is limited in size, that is to say, it concerns only a very small number of specimens captured accidentally, for a limited period, and only if those specimens can be released without sustaining harm other than negligible harm.’<sup>39</sup>

Several EU environmental Directives and Regulations expressly aim for a high level of protection, usually in the preamble or the objectives of the act. For example, Article 1 of the SEA Directive (2001/42/EC)<sup>40</sup> states ‘The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment’.

The aims of the Directive, read in line with Article 37 of the EU Charter, support an extensive interpretation of the material scope of environmental law. For example, in Case C-24/19 (*A and Others; Wind turbines at Aalter and Nevele*),<sup>41</sup> concerning again the environmental impact assessment of plans and programmes, the CJEU observed the following: ‘Secondly, Article 2(a) of Directive 2001/42 includes not only the preparation and adoption of “plans and programmes”, but also modifications to them (see, to that effect, judgments of 22 March 2012, *Inter-Environnement Bruxelles and Others*, C-567/10, EU: C:2012:159, paragraph 36, and of 10 September 2015, *Dimos Kropias Attikis*, C-473/14, EU: C:2015:582, paragraph 44). As the Advocate General stated in point 68 of his Opinion, that latter case, in which the modification of the plan or programme concerned is also likely to have significant environmental effects, within the meaning of Article 3(1) of Directive 2001/42, most often arises when an authority decides of its own initiative to carry out such a modification, without being obliged to

38 Court of Justice of the European Union, 2021a.

39 Court of Justice of the European Union, 2021a, para. 65.

40 European Parliament and Council, 2001, pp. 30–37.

41 Court of Justice of the European Union, 2020b.

do so. Those foregoing considerations are consistent with the purpose and objectives of Directive 2001/42, which itself comes within the framework established by Article 37 of the Charter of Fundamental Rights of the European Union, according to which a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the European Union and ensured in accordance with the principle of sustainable development.<sup>42</sup>

However, the scope of the EU requirements cannot be extended beyond setting higher levels of environmental protection. In Case C-444/15 (*Associazione Italia Nostra Onlus*),<sup>43</sup> the referring national court challenged, in essence, the validity of Article 3(3) of the SEA Directive in light of Article 191 of the TFEU and Article 37 of the Charter. Specifically, it provides that plans and programmes which require an environmental assessment pursuant to Articles 6 and 7 of the Habitats Directive<sup>44</sup> are not subject to a mandatory environmental assessment under the SEA Directive. However, according to the CJEU, it was concluded that: ‘Article 3(3) of Directive 2001/42 has revealed nothing which could affect its validity in the light of Article 191 TFEU, it follows that that provision also reveals nothing which could affect its validity in the light of Article 37 of the Charter.’<sup>45</sup>

Even without expressive wording in the EU secondary legislation, Article 37 of the EU Charter may serve to emphasise the multi-layered motives behind EU legislation and the relationship between environmental protection and other public interests. For example, in Case C-626/22 (*Ilva and Others*),<sup>46</sup> the CJEU analysed the underlying principles of the integrated permitting procedure which applies to large industrial operations. It held that: ‘Having regard to the close link between the protection of the environment and that of human health, Directive 2010/75 seeks to promote not only the application of Article 37 of the Charter, as stated in recital 45 of that directive, but also the application of Article 35 of the Charter, it not being possible to achieve a high level of protection of human health without a high level of environmental protection, in accordance with the principle of sustainable development. Directive 2010/75 thus contributes to protecting the right to live in an environment which is adequate for personal health and well-being, as referred to in recital 27 thereof.’<sup>47</sup>

Therefore, Article 37 extends far beyond the realm of lofty pronouncement. It serves as a guiding compass for EU institutions, impelling them to integrate environmental considerations into their policies and endeavours. This symphonic approach ensures that environmental concerns are not treated as isolated silos but rather as integral components of every facet of European decision-making. Furthermore, as Tridimas pointed out, there is no reason why articles of the EU Charter which incorporate principles rather than rights should be denied any interpretative value in the

42 Court of Justice of the European Union, 2020b, paras. 43–44.

43 Court of Justice of the European Union, 2016a.

44 Council of the European Communities, 1992, pp. 7–50.

45 Court of Justice of the European Union, 2016a, para. 63.

46 Court of Justice of the European Union, 2024.

47 Court of Justice of the European Union, 2024, para. 72.

absence of action implementation: ‘Indeed, the value of constitutional principles is precisely to inform the interpretation of normative rules, including those that have not been adopted specifically in order to implement them. This is the case, for example with the principle of environmental protection which is proclaimed in Article 37 of the Charter.’<sup>48</sup>

## **6. Article 47 of the EU Charter: Safeguarding Justice in the European Union**

Article 47 of the EU Charter stands as a stalwart pillar of justice within the European Union. It enshrines two invaluable safeguards—the right to an effective remedy and the right to a fair trial. These imperatives guarantee that individuals whose rights are infringed have access to equitable and impartial legal recourse. The inclusion of Article 47 in the EU Charter acknowledges the paramount importance of ensuring that everyone within the EU, regardless of background or circumstance, has the opportunity to seek redress for violations of their rights based on EU law, that is, within the scope of the application of EU legislation.

The practical import of Article 47 of the EU Charter is multifaceted. It guarantees individuals the ability to seek reparations for breaches of their EU-protected rights before a competent and independent tribunal. This commitment to due process ensures that legal proceedings are conducted with fairness, transparency, and respect for the fundamental rights of all parties involved. Furthermore, Article 47 of the EU Charter safeguards the right to competent legal counsel. This provision ensures that individuals navigating the complexities of the legal system have access to informed and professional representation, levelling the playing field, and fostering a just and equitable legal system.

In this respect, Article 47 of the EU Charter goes well beyond the guarantees of Article 6 of the ECHR (right to a fair trial), which is limited in several ways. First, the ECHR requirements are applicable to the determination of civil rights and obligations or criminal charge. The ECtHR broadly interprets the scope of Article 6 of the ECHR; therefore, it also applies to access to administrative courts if civil rights are at stake. For example, if a neighbour challenges the construction of a building that may affect their ownership rights.<sup>49</sup> Nevertheless, this provision is not automatically applicable to all environmental or public health-related matters. However, Article 47 of the EU Charter makes no difference to the various rights and freedoms guaranteed by EU law.

Second, Article 47 of the EU Charter puts much more emphasis on the effectiveness of the judicial protection as it establishes the right to an effective remedy and not merely the right to a fair trial. This includes the possibility of being advised, defended, and represented. Similarly, legal aid must be made available to those who

<sup>48</sup> Tridimas, 2014, p. 380.

<sup>49</sup> See: European Court of Human Rights, 1982.

lack sufficient resources, in so far as such aid is necessary to ensure effective access to justice.

The effective judicial protection of individuals' rights under EU law constitutes a general principle derived from the constitutional traditions common to Member States, enshrined in Articles 6 and 13 of the ECHR and reaffirmed by Article 47 of the EU Charter. Respect for the rule of law is one of the common values enshrined in Article 2 of the TEU. The second subparagraph of Article 19(1) of the TEU, which requires Member States to provide remedies sufficient to ensure effective judicial protection in the fields covered by EU law, represents a concrete manifestation of that value. Article 47 of the Charter must be considered when interpreting the second subparagraph of Article 19(1).<sup>50</sup>

It falls to Member States to establish a system of legal remedies and procedures that ensure effective judicial protection in fields covered by EU law. Member States have the responsibility of designating the courts or institutions empowered to review the validity of national provisions, prescribing legal remedies and procedures to contest the validity of those provisions, and, where an action is successful, annulling them and determining the effects of such an annulment.<sup>51</sup>

Member States must ensure effective judicial protection in the fields covered by EU law, in the absence of specific EU rules on the matter. Still, EU law does not compel Member States to adopt a specific system of remedies or procedural rules governing actions to safeguard the rights that individuals derive from EU law,<sup>52</sup> provided that the available remedies and procedures comply with the principles of equivalence and effectiveness. In Case C-583/11 (*Inuit Tapiriit Kanatami and Others v. Parliament and Council*),<sup>53</sup> the CJEU emphasised that neither the TFEU nor Article 19 TEU necessitates the creation of remedies beyond those already laid down by national law to ensure the observance of EU law before national courts. This position differs only if the structure of the national legal system provides no remedy whatsoever that makes it possible, even indirectly, to ensure respect for the rights that individuals derive from EU law. In such circumstances, national courts must assert jurisdiction to determine an action brought about by an affected person to defend the rights guaranteed to them by EU law.<sup>54</sup>

Consequently, reflecting the principles of equivalence and effectiveness, detailed procedural rules governing actions to safeguard an individual's rights under EU law must be no less favourable than those governing similar domestic actions. Further, they must not render the exercise of rights conferred by EU law practically impossible

50 See: Court of Justice of the European Union, 2021b, para. 102; 2022a, para. 89.

51 See: Court of Justice of the European Union, 2018, para. 34.

52 See: Court of Justice of the European Union, 2010b, para. 74.

53 Court of Justice of the European Union, 2013c, paras. 103–104.

54 The rules of *locus standi* and the requirements, *inter alia*, of direct and individual concern in Article 263 TFEU are specific to actions for the annulment of acts of the EU institutions before the General Court. Actions in fields covered by EU law before national courts are, in principle, subject to the principle of procedural autonomy.

or excessively difficult. These requirements are also based on the principle of sincere cooperation enshrined in Article 4(3) of the TEU.<sup>55</sup>

The requirement for judicial independence derived from the second subparagraph of Article 19(1) of the TEU encompasses two aspects. The first external aspect necessitates that the court concerned exercises its functions with complete autonomy, without being subject to any hierarchical constraint or subordinated to any other body, and without taking orders or instructions from any source whatsoever. Thereby, it is protected against external interventions or pressure liable to compromise the independent judgment of its members and influence their decisions. Second, the internal aspect is linked to impartiality and seeks to ensure that an equal distance is maintained between the parties to the proceedings and their respective interests regarding the subject matter. The latter aspect demands objectivity and the absence of any interest in the outcome of the proceedings, apart from the strict application of the rule of law.<sup>56</sup>

The right to effective judicial protection pursuant to Article 47 of the Charter does not exist in isolation; it must be linked to a right conferred on or freedom guaranteed by EU law. Any individual may invoke Article 47 of the EU Charter before a national court challenges an act adopted by a Member State in its implementation of EU Law which adversely affects that individual.<sup>57</sup> Within this context, Member States enjoy considerable discretion in determining what constitutes an impairment of a right or freedom, the conditions for the admissibility of actions, and the bodies before which such actions may occur.<sup>58</sup> In Case C-73/10 P (*Internationale Fruchthandels-Gesellschaft Weichert v. Commission*),<sup>59</sup> for example, the CJEU held that the right of access to a court is not absolute and is subject to limitations, such as rules establishing time limits within which an action must be initiated. Such rules must, however, not restrict a litigant's access in such a way or to such an extent as to impair the essence of the right they seek to assert. Such rules must pursue a legitimate aim, and the relationship between the means employed and the aim pursued must be reasonable and proportionate.<sup>60</sup>

On *locus standi* before national courts, the CJEU has stated that: 'whilst it is, in principle, for national law to determine an individual's standing and legal interest in bringing proceedings, EU law nevertheless requires, in addition to observance of the principles of equivalence and effectiveness, that the national legislation should not undermine the right to effective judicial protection...'<sup>61</sup>

55 Save where it provides otherwise, EU law imposes no particular judicial model on the Member States. See: Court of Justice of the European Union, 2019a, para. 130.

56 See: Court of Justice of the European Union, 2022b, para. 41.

57 Court of Justice of the European Union, 2021c, paras. 45–46.

58 See, by analogy, Court of Justice of the European Union, 2011b, para. 55; 2020c, paras. 60–65.

59 Court of Justice of the European Union, 2010c, para. 53; 2013e; European Court of Human Rights, 2016, para. 120.

60 See: European Court of Human Rights, 1998, para. 44.

61 Court of Justice of the European Union, 2015, para. 50; 2005, paras. 18–21; 2007, para. 36; 2010b, paras. 74–80.

As regards its relevance for environmental disputes, Article 47 of the EU Charter is not the sole EU guarantee on access to justice in environmental matters. Most notably, the EU is a party to the 1998 Aarhus Convention, which requires wide access to justice to review decisions on environmental information [Art. 9(1)], decisions, acts or omissions concerning large projects [Art. 9(2)], and other environmental acts or omissions [Art. 9(3)]. Furthermore, the procedures must provide adequate and effective remedies, including injunctive relief, as appropriate and be fair, equitable, timely, and not prohibitively expensive [Article 9(4)].

To implement the Aarhus Convention, in certain instances, EU secondary legislation specifically affords *locus standi* to bring action in environmental matters before national courts to advance the objectives that the legislation pursues. In particular, the specific requirements of Art. 11 of the 2011 EIA Directive<sup>62</sup> and Art. 25 of the Industrial Emissions Directive<sup>63</sup> cover the judicial review of decisions concerning large projects, particularly the land-use permit, building permit, and operation permit. These requirements are largely copied from the Aarhus Convention and are therefore very similar. For example, both Directives guarantee the public the right to challenge the substantive or procedural legality of acts and require the proceedings to be fair, equitable, timely, and not prohibitively expensive.

However, there are no EU regulations on general access to justice in environmental matters. The Commission adopted a proposal for a Directive on access to justice in environmental matters in 2003.<sup>64</sup> Still, the proposal did not gather sufficient support from national governments and was finally withdrawn by the Commission in 2014.<sup>65</sup> The Member States opined that judicial protection belonged to their competence because of the principle of subsidiarity.<sup>66</sup> Consequently, specific provisions aimed at ensuring effective judicial protection are currently limited to a few areas of the EU environmental law. However, Article 47 of the EU Charter serves as a strong argument for the direct applicability of EU environmental legislation if the Aarhus Requirements are not implemented or if there are any obstacles to effective judicial review.

This situation is relatively simple in the case of the activities covered by Art. 9(2) of the Aarhus Convention, the situation is relatively simple. In 1996, the CJEU concluded that specific provisions of the EIA Directive could have a direct effect.<sup>67</sup> In 2011, it extended the set of provisions to include Art. 11, which sets out specific conditions for public participation in decision-making and access to judicial protection.<sup>68</sup> The CJEU has not addressed the direct effects of the Industrial Emissions Directive. Still,

62 European Parliament and Council, 2012, pp. 1–21.

63 European Parliament and Council, 2010, pp. 17–119.

64 European Commission, 2003.

65 European Commission, 2014.

66 Krämer, 2012, p. 147.

67 See: Council of the European Communities, 1985, arts. 2(1), 4(2); Court of Justice of the European Union, 1996.

68 Court of Justice of the European Union, 2011b.

the conclusions regarding the EIA Directive can be used *per analogiam*, given that the provisions of both directives are very similar.

Furthermore, in 2016, the CJEU concluded in Case C-243/15 (*Lesoochránárske zoskupenie II*)<sup>69</sup> that the requirements of Article 6(3) of the Habitats Directive on the assessment of projects fall under the regime Art. 9(2) of the Aarhus Convention and can be directly applicable even though the Habitats Directive contains no provisions on access to justice. The CJEU concluded that

‘inasmuch as Article 47 of the Charter, read in conjunction with Article 9(2) and (4) of the Aarhus Convention, enshrines the right to effective judicial protection, in conditions ensuring wide access to justice, of the rights which an environmental organisation meeting the conditions laid down in Article 2(5) of that convention derives from EU law, in this instance from Article 6(3) of Directive 92/43, read in conjunction with Article 6(1)(b) of that convention, it must be interpreted as precluding, in a situation such as that at issue in the main proceedings, an interpretation of rules of national procedural law to the effect that an action against a decision refusing such an organisation the status of party to an administrative procedure for authorisation of a project that is to be carried out on a site protected pursuant to that directive does not necessarily have to be examined during the course of that procedure, which may be definitively concluded before a definitive judicial decision on possession of the status of party is adopted, and is automatically dismissed as soon as that project is authorised, thereby requiring that organisation to bring an action of another type in order to obtain that status and to secure judicial review of compliance by the competent national authorities with their obligations stemming from Article 6(3) of that directive’.<sup>70</sup>

The CJEU confirmed that many other EU directives can be directly applicable, this time in the regime of Art. 9(3) of the Aarhus Convention. Article 9(3) of the Aarhus Convention is broader in scope in that it covers a wider category of measures and decisions, and is addressed to members of the public in general. Conversely, that provision confers greater discretion to Member States when they lay down the criteria for determining, among all members of the public, who has the right to bring the action provided for in that provision.<sup>71</sup> Article 9(3) of the Aarhus Convention contemplates Member States adopting laws that afford broader or even unrestricted standing to maintain certain kinds of environmental action; nevertheless, it imposes no obligation to adopt such rules.<sup>72</sup> The Court held that according to the specific wording of Article 9(3) of the Aarhus Convention, the criteria that Member States are permitted

69 Court of Justice of the European Union, 2016c.

70 Court of Justice of the European Union, 2016c, para. 73.

71 See: Court of Justice of the European Union, 2021d, paras. 36, 37, 62.

72 See: Court of Justice of the European Union, 2022c, para. 49.

to establish in their national law relate to determining which persons are entitled to bring an action (*locus standi*), not to defining the subject matter of the action where the latter concerns alleged infringements of national environmental law provisions.<sup>73</sup>

Therefore, provisions of EU environmental law that do not provide for public participation may have a direct effect. The CJEU adopted the formulation that it would be ‘incompatible with the binding effect attributed to a directive by Article 288 TFEU to exclude, in principle, the possibility that the obligations which it imposes may be relied on by those concerned’.<sup>74</sup> In Case C-361/88 (*Commission v. Germany*),<sup>75</sup> the CJEU found a link between air protection and individuals’ rights, – even though air quality legislation does not contain comprehensive rules regarding access to justice. The Court concluded that the quality (concentration) limit values aim to protect human health. Thus, they have the objective of protecting individuals’ rights to health. They are sufficiently precise and unconditional for direct application. This means that the individual has the right to trace back the limit values in their national legislation; it follows from this that Member States are obliged to transpose the limit values of the air pollution directive into their national laws. Later, in its judgment in Case C-237/07 (*Janecek*),<sup>76</sup> the CJEU held that individuals directly affected must be able to request the drawing up of an action plan to reduce air pollution, irrespective of the form in which such a plan is adopted. In Case C-404/13 (*ClientEarth*),<sup>77</sup> the CJEU reached the same conclusion regarding the Ambient Air Quality Directive.<sup>78</sup>

Further on, the CJEU started referring to Article 47 of the EU Charter and translated its conclusions regarding air quality directives in cases concerning water management: In Case C-664/15 (*Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*),<sup>79</sup> the CJEU concluded that environmental associations must be able to challenge a decision before a court to approve a project which does not require the EIA [and therefore access to justice does not fall under Art. 9(2) of the Aarhus Convention and detailed requirements of the EIA Directive], but which may be contrary

73 Court of Justice of the European Union, 2022c, para. 64.

74 Court of Justice of the European Union, 2017, para 57.

75 Court of Justice of the European Union, 1991.

76 Court of Justice of the European Union, 2008, paras. 37, 39: ‘...the natural or legal persons directly concerned by a risk that the limit values or alert thresholds may be exceeded must be in a position to require the competent authorities to draw up an action plan where such a risk exists, if necessary by bringing an action before the competent courts (...) the failure to observe the measures required by the directives which relate to air quality and drinking water, and which are designed to protect public health, could endanger human health, the persons concerned must be in a position to rely on the mandatory rules included in those directives.’

77 Court of Justice of the European Union 2014d, para. 56.

78 European Parliament and Council, 2008, pp. 1–44.

79 Court of Justice of the European Union, 2017.

to an obligation under the Water Framework Directive.<sup>80</sup> By denying environmental organisations ‘any right to bring an action against such a decision to grant a permit, the relevant national procedural law is contrary to the requirements flowing from a combined reading of Article 9(3) of the Aarhus Convention and Article 47 of the Charter’.<sup>81</sup>

Similarly, in *Case C-535/18 (Land Nordrhein-Westfalen)*<sup>82</sup>, also concerning the Water Framework Directive, the CJEU held that the members of the public concerned by a project must be able to assert, before the competent national courts, that there has been a breach of the requirements to prevent the deterioration of bodies of water. EU law permits Member States to provide that where a procedural defect affecting the decision to approve a project did not alter the substance of that decision, an application for its annulment is admissible only if the irregularity in question deprived the claimant of their right to participate effectively in the environmental decision-making process. The claimants in the main proceedings were either subjected to expropriation or had a domestic well for their private water supply within the area covered by the project. The CJEU concluded that they could be affected by the decision, though not entirely. While the protection of groundwater as a resource for human use is of their concern, the state of bodies of surface water does not seem to affect them.<sup>83</sup>

In *Case C-197/18 (Wasserleitungsverband Nördliches Burgenland and Others)*,<sup>84</sup> the CJEU concluded that the Nitrates Directive<sup>85</sup> was directly applicable. In that regard, the CJEU referred to the above-mentioned C-664/15 case and held that where they met the criteria, if any, laid down in national law: ‘members of the public have the rights provided for in Article 9(3) of the Aarhus Convention. That provision, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union,

80 Court of Justice of the European Union, 2017, para. 30: ‘By its first question, the referring court asks, in essence, whether Article 4 of Directive 2000/60 or that directive as a whole must be interpreted as meaning that, under Article 9(3) of the Aarhus Convention, an environmental organisation must be able to contest before a court a decision on a permit that is governed exclusively by the legislation governing water-related matters in respect of a project that is not subject to an environmental impact assessment under Directive 2011/92.’

81 Court of Justice of the European Union, 2017, para. 52.

82 Court of Justice of the European Union, 2020d.

83 Court of Justice of the European Union, 2020d, paras. 124, 128: ‘However, neither the information contained in the order for reference nor the observations submitted to the Court are capable of establishing the relevance, for the claimants in the main proceedings, of the bodies of surface water that may also be affected by the project at issue. In those circumstances, it does not appear that the claimants in the main proceedings can be concerned by a possible infringement of obligations deriving from Article 4(1)(a) of Directive 2000/60, with the result that the Court’s examination will concern only Article 4(1)(b), regarding groundwater (...) it must be held that, by its objective and the obligations laid down in Article 4(1)(b) in order to attain that objective, Directive 2000/60 also pursues the specific objective of protecting groundwater as a resource for human use.’

84 Court of Justice of the European Union, 2019b.

85 Council of the European Communities, 1991, pp. 1–8.

imposes on Member States an obligation to ensure effective judicial protection of the rights conferred by EU law, in particular the provisions of environmental law.<sup>86</sup>

The decision in question contained several provisions in the annexes intended to ensure that waters are protected with respect to both the discharge of rainwater into surface waters and its infiltration into the groundwater. The CJEU ruled that the affected natural and legal persons, such as the applicants in the main proceedings (including the municipality and a water distribution association), should be able to require competent national authorities to amend an existing action programme, or adopt additional measures or reinforced actions.<sup>87</sup>

Therefore, the CJEU case law helps eliminate the double standard in the implementation of Art. 9(3) of the Aarhus Convention at the EU and national levels.<sup>88</sup> On the one hand, legal protection under the Aarhus Convention goes beyond effective legal protection under Article 47 of the Charter, as suggested by Advocate General Kokott in her Opinion in Case C-260/11 (*Edwards and Pallikaropoulos*).<sup>89</sup> Indeed, while the latter provision expressly relates to the protection of individual rights, legal protection in environmental matters ‘generally serves not only the individual interests of the claimants, but also, or even exclusively, the public’.<sup>90</sup> She also rightly pointed out that ‘the recognition of the public interest in environmental protection is especially important since there may be many cases where the legally protected interests of particular individuals are not affected or are affected only peripherally’.<sup>91</sup> In such cases, ‘as the environment cannot defend itself before a court [it] needs to be represented by active citizens or non-governmental organisations’.<sup>92</sup>

On the other hand, Article 47 of the EU Charter provides guarantees to a wider group of entities than the public or the public concerned. For example, municipalities are not members of the public concerned because the Aarhus Convention considers them primarily part of the state.<sup>93</sup> However, their rights may be affected by violations

86 Court of Justice of the European Union, 2019b, para. 33.

87 Court of Justice of the European Union, 2019b, para. 73: ‘...natural and legal persons, such as the applicants in the main proceedings, should be in a position to require the competent national authorities to amend an existing action programme or adopt additional measures or reinforced actions, provided for in Article 5(5) of that directive, as long as the nitrate levels in the groundwaters exceed or could exceed, in the absence of such measures, 50 mg/l at one or more measuring points within the meaning of Article 5(6) of that directive.’

88 See: Pernice-Warnke, 2008.

89 Court of Justice of the European Union, 2012.

90 Court of Justice of the European Union, 2012, paras. 39–40.

91 Court of Justice of the European Union, 2012, para. 42.

92 Court of Justice of the European Union, 2012, para. 42.

93 See: Aarhus Convention Compliance Committee, 2015, para. 52: ‘While under the domestic law of Parties municipalities might exercise their right to self-government and other subjective rights, even before courts, in the context of the Convention and international law in general, a “public authority” under article 2, paragraph 2 (a), of the Convention was considered an emanation of the Party concerned. Hence, an allegation brought to the Committee by the communicant would give rise to an internal dispute between authorities of a Party concerned, which was not within the remit of the Committee. The Committee therefore found that the communicant was not a member of the public for the purposes of article 15 of the Convention...’

of EU Directives, and thus have access to judicial protection, including through the direct effect of the EU Directives.

The recent case law of the CJEU elaborates on the intensity of judicial reviews and effective remedies, further explaining the basic requirements for adequate judicial protection. Given the technical nature of EU environmental legislation and its problematic enforcement, such case law seems extremely valuable.

For example, in Case C-873/19 (*Deutsche Umwelthilfe*)<sup>94</sup> the CJEU concluded with reference to Article 47 of the EU Charter that an environmental NGO must be allowed to challenge an administrative decision granting or amending EC-type approval at the national level, which may be contrary to EU rules on motor vehicles concerning emissions:<sup>95</sup> ‘...the fact that an environmental association, although authorised for the purposes of having access to the judicial procedures referred to in Article 9(3) of the Aarhus Convention, cannot access justice in order to challenge a decision granting or amending EC type-approval which may be contrary to Article 5(2) of Regulation No 715/2007 and, therefore, contrary to a ‘provision of national law relating to the environment’ within the meaning of Article 9(3) of that convention, constitutes a limitation of the right to an effective remedy, guaranteed by Article 47 of the Charter. Such a limitation cannot be considered justified.’<sup>96</sup>

Similarly, in Case C-723/17 (*Craeynest and Others*),<sup>97</sup> the CJEU ruled that individuals must be able to challenge the air pollution monitoring system in their cities because EU law lays down detailed rules concerning the use and location of sampling points to measure air quality in zones and agglomerations comprising the territory of each Member State. The obligation to establish sampling points such that they provide information on the most polluted locations and the obligation to establish a minimum number of sampling points are clear, precise, and unconditional. In this respect, the average values across an entire zone or city are insufficient, as they may underestimate the exposure to polluted air.

Article 47 of the EU Charter links access to justice at the EU level, which has been insufficient for many years. Most notably, the appropriateness of the CJEU’s approach was dramatically called into question by Advocate General Jacobs in the C-50/00 P (*Union de Pequeños Agricultores*)<sup>98</sup> case and, simultaneously, by the Court of First Instance in the T-177/01 (*Jégo-Quéré*)<sup>99</sup> case. To avoid depriving applicants of their right to effective judicial protection, Advocate General Jacobs proposed a less stringent test for individual concern.

According to this proposal, a person could ‘be regarded as individually concerned by a Community measure where, by reason of his particular circumstances, the

94 Court of Justice of the European Union, 2022c.

95 European Parliament and Council, 2007, pp. 1–16.

96 Court of Justice of the European Union, 2022c, para. 72.

97 Court of Justice of the European Union 2019c.

98 Court of Justice of the European Union, 2002.

99 Court of First Instance of the European Communities, 2002, para. 51.

measure has, or is liable to have, a substantial adverse effect on his interests'.<sup>100</sup> This argument for broadening the locus standi, albeit unsuccessful, was also supported with a reference to Article 47 of the EU Charter.

Access to justice in environmental matters at the EU level is regulated by the Aarhus Regulation adopted in 2006.<sup>101</sup> The regulation was recently amended to align with the Aarhus requirements.<sup>102</sup> Unsurprisingly, the amendment<sup>103</sup> refers to the EU Charter as well:

‘This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union (the “Charter”), in particular the need to integrate a high level of environmental protection into the policies of the Union (Article 37), the right to good administration (Article 41) and the right to an effective remedy and to a fair trial (Article 47). This Regulation contributes to the effectiveness of the Union system of administrative and judicial review, and as a result, strengthens the application of Articles 37, 41 and 47 of the Charter and thereby contributes to the rule of law, enshrined in Article 2 TEU.’<sup>104</sup>

## 7. Conclusion

The EU Charter has demonstrably enhanced the EU’s commitment to comprehensive environmental protection. It elevates environmental considerations, empowers individuals and organisations, drives continuous improvement, and strengthens existing legal frameworks. As the EU faces ongoing environmental challenges, the EU Charter stands as a potent symbol of its commitment to a sustainable future for generations to come.

The scope of application of the EU Charter is a complex and nuanced field. It is intimately linked to the implementation of EU law, broadly construed, and operates primarily as a tool to ensure that Member States respect fundamental rights when acting within the EU’s sphere of influence. While limitations exist, its scope remains fluid, adapting to the evolving nature of the EU. The EU Charter, therefore, stands not as a static monument to rights, but as a dynamic instrument whose full potential continues to unfold with the passage of time.

While the EU Charter and the ECHR share the goal of protecting fundamental rights, their approaches to environmental protection differ in scope and emphasis. The EU Charter allows for more ambitious environmental goals and applies them to specific legal contexts. However, both instruments work in concert, establishing a ratcheting effect that drives ever-higher standards of environmental protection across Europe.

100 Court of Justice of the European Union, 2002, para. 60.

101 European Parliament and Council, 2006, pp. 13–19.

102 See: Vomáčka, 2023.

103 European Parliament and Council, 2021, pp. 1–7.

104 European Parliament and Council, 2021, preamble para. 26.

Article 37 of the EU Charter mandates the integration of environmental considerations at the heart of EU policies and actions. This enshrines environmental protection as a guiding principle, compelling policymakers and legislators to consider the environmental implications of their decisions proactively. In environmental cases, this provision becomes a yardstick against which laws, policies, and actions can be measured, ensuring alignment with the EU's commitment to a healthy planet. Article 37 of the EU Charter not only safeguards existing environmental protection but also fuels the drive for continuous improvement. The mandate for a high level of protection has pushed the EU to set ambitious environmental goals, pursue innovative solutions, and invest in sustainable technologies. In environmental cases, this means that the threshold for protection rises over time, creating a legal landscape that increasingly favours preservation and restoration.

Article 47 of the EU Charter serves as a potent safeguard against justice in the European Union. This guarantees individuals the ability to vindicate their rights and participate in a legal system that upholds the hallowed principles of fairness, impartiality, and due process. In doing so, Article 47 plays a critical role in ensuring that the scale of justice remains balanced and accessible to all within the Union. This has profound significance in the context of environmental cases, which are often referred to by the CJEU to support enforcement via the direct effect of EU environmental directives.

## Bibliography

- Aarhus Convention Compliance Committee (2015) *Minutes of the 49th Meeting of the Committee, 30 June–3 July 2015*. Geneva: United Nations Economic Commission for Europe.
- Ahmed, T., Butler, I. (2006) ‘The European Union and Human Rights: An International Law Perspective’, *European Journal of International Law*, 17(4), pp. 771–801; <https://doi.org/10.1093/ejil/chl029>.
- Besselink, L. F. M. (2001) ‘The Member States, the National Constitutions and the Scope of the Charter’, *Maastricht Journal of European and Comparative Law*, 8(1), pp. 68–80; <https://doi.org/10.1177/1023263X0100800105>.
- Betten, L. (2001) ‘The EU Charter on Fundamental Rights: A Trojan Horse or a Mouse?’, *International Journal of Comparative Labour Law and Industrial Relations*, 2, pp. 151–164; <https://doi.org/10.54648/354227>.
- Council of the European Communities (1985) *Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment*. Official Journal of the European Communities, L 175, 5 July 1985.
- Council of the European Communities (1991) *Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources*. Official Journal of the European Communities, L 375, 31 December 1991.
- Council of the European Communities (1992) *Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora*. Official Journal of the European Communities, L 206, 22 July 1992.
- Court of First Instance of the European Communities (2002) *Judgment of 3 May 2002, Jégo-Quéré v. Commission, Case T-177/01, ECLI:EU:T:2002:112*. Luxembourg: CFI.
- Court of Justice of the European Union (1969) *Judgment of 12 November 1969, Stauder v Stadt Ulm, Case C-29/69, ECLI:EU:C:1969:57*. Luxembourg: CJEU.
- Court of Justice of the European Union (1970) *Judgment of 17 December 1970, Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel, Case C-11/70, ECLI:EU:C:1970:114*. Luxembourg: CJEU.
- Court of Justice of the European Union (1974) *Judgment of 14 May 1974, Nold KG v. Commission, Case C-4/73, ECLI:EU:C:1974:51*. Luxembourg: CJEU.
- Court of Justice of the European Union (1991) *Judgment of 30 May 1991, Commission v. Germany, Case C-361/88, ECLI:EU:C:1991:224*. Luxembourg: CJEU.
- Court of Justice of the European Union (1996) *Judgment of 24 October 1996, Kraaijeveld and Others, Case C-72/95, ECLI:EU:C:1996:404*. Luxembourg: CJEU.
- Court of Justice of the European Union (2002) *Opinion of Advocate General Jacobs of 21 March 2002, Unión de Pequeños Agricultores v. Council, Case C-50/00 P, ECLI:EU:C:2002:197*. Luxembourg: CJEU.

- Court of Justice of the European Union (2004) *Opinion of Advocate General Ruiz-Jarabo Colomer of 30 November 2004, Deponiezwirkverband Eiterköpfe, Case C-6/03, ECLI:EU:C:2004:758*. Luxembourg: CJEU.
- Court of Justice of the European Union (2005) *Judgment of 13 January 2005, Streekgewest, Case C-174/02, ECLI:EU:C:2005:10*. Luxembourg: CJEU.
- Court of Justice of the European Union (2007) *Judgment of 13 March 2007, Unibet, Case C-432/05, ECLI:EU:C:2007:163*. Luxembourg: CJEU.
- Court of Justice of the European Union (2008) *Judgment of 25 July 2008, Janecek, Case C-237/07, ECLI:EU:C:2008:447*. Luxembourg: CJEU.
- Court of Justice of the European Union (2009) *Judgment of 27 October 2009, ČEZ, Case C-115/08, ECLI:EU:C:2009:660*. Luxembourg: CJEU.
- Court of Justice of the European Union (2010a) *Order of 12 November 2010, Asparuhov Estov and Others, Case C-339/10, ECLI:EU:C:2010:680*. Luxembourg: CJEU.
- Court of Justice of the European Union (2010b) *Judgment of 6 May 2010, Club Hotel Loutraki and Others, Joined Cases C-145/08 and C-149/08, ECLI:EU:C:2010:247*. Luxembourg: CJEU.
- Court of Justice of the European Union (2010c) *Order of 16 November 2010, Internationale Fruchtimport Gesellschaft Weichert v. Commission, Case C-73/10 P, ECLI:EU:C:2010:684*. Luxembourg: CJEU.
- Court of Justice of the European Union (2011a) *Judgment of 21 December 2011, Commission v Austria, Case C-28/09, ECLI:EU:C:2011:854*. Luxembourg: CJEU.
- Court of Justice of the European Union (2011b) *Judgment of 12 May 2011, Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen, Case C-115/09, ECLI:EU:C:2011:289*. Luxembourg: CJEU.
- Court of Justice of the European Union (2012) *Opinion of Advocate General Kokott of 11 April 2013, Edwards and Pallikaropoulos, Case C-260/11, ECLI:EU:C:2012:645*. Luxembourg: CJEU.
- Court of Justice of the European Union (2013a) *Judgment of 22 January 2013, Sky Österreich GmbH v. Österreichischer Rundfunk, Case C-283/11, ECLI:EU:C:2013:28*. Luxembourg: CJEU.
- Court of Justice of the European Union (2013b) *Judgment of 18 July 2013, Alemo-Herron and Others v. Parkwood Leisure Ltd, Case C-426/11, ECLI:EU:C:2013:521*. Luxembourg: CJEU.
- Court of Justice of the European Union (2013c) *Judgment of 3 October 2013, Inuit Tapiriit Kanatami and Others v. European Parliament and Council, Case C-583/11 P, ECLI:EU:C:2013:625*. Luxembourg: CJEU.
- Court of Justice of the European Union (2013d) *Judgment of 7 May 2013, Åkerberg Fransson, Case C-617/10, ECLI:EU:C:2013:105*. Luxembourg: CJEU.
- Court of Justice of the European Union (2013e) *Judgment of 28 February 2013, Review of Arango Jaramillo and Others v. EIB, Case C-334/12 RX-II, ECLI:EU:C:2013:134*. Luxembourg: CJEU.
- Court of Justice of the European Union (2014a) *Judgment of 15 January 2014, Association de médiation sociale, Case C-176/12, ECLI:EU:C:2014:2*. Luxembourg: CJEU.

- Court of Justice of the European Union (2014b) *Judgment of 15 January 2014, Association de médiation sociale v. Union Locale des Syndicats CGT and Others, Case C-176/12, ECLI:EU:C:2014:2*. Luxembourg: CJEU.
- Court of Justice of the European Union (2014c) *Judgment of 6 March 2014, Siragusa v Regione Sicilia – Soprintendenza Beni Culturali e Ambientali di Palermo, Case C-206/13, ECLI:EU:C:2014:126*. Luxembourg: CJEU.
- Court of Justice of the European Union (2014d) *Judgment of 19 November 2014, ClientEarth, Case C-404/13, ECLI:EU:C:2014:2382*. Luxembourg: CJEU.
- Court of Justice of the European Union (2015) *Judgment of 19 March 2015, E.ON Földgáz Trade, Case C-510/13, ECLI:EU:C:2015:189*. Luxembourg: CJEU.
- Court of Justice of the European Union (2016a) *Judgment of 21 December 2016, Associazione Italia Nostra Onlus, Case C-444/15, ECLI:EU:C:2016:978*. Luxembourg: CJEU.
- Court of Justice of the European Union (2016b) *Judgment of 4 May 2016, Poland v. Parliament and Council, Case C-358/14, ECLI:EU:C:2016:323*. Luxembourg: CJEU.
- Court of Justice of the European Union (2016c) *Judgment of 8 November 2016, Lesoochránárske zoskupenie II, Case C-243/15, ECLI:EU:C:2016:838*. Luxembourg: CJEU.
- Court of Justice of the European Union (2017) *Judgment of 20 December 2017, Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation, Case C-64/15, ECLI:EU:C:2017:987*. Luxembourg: CJEU.
- Court of Justice of the European Union (2018) *Judgment of 4 December 2018, Minister for Justice and Equality and Commissioner of An Garda Síochána, Case C-378/17, ECLI:EU:C:2018:979*. Luxembourg: CJEU.
- Court of Justice of the European Union (2018) *Judgment of 6 March 2018, Slovak Republic v. Achmea BV (Achmea), Case C-284/16, ECLI:EU:C:2018:158*. Luxembourg: CJEU.
- Court of Justice of the European Union (2019) *Judgment of 26 June 2019, Craeynest and Others, Case C-723/17, ECLI:EU:C:2019:533*. Luxembourg: CJEU.
- Court of Justice of the European Union (2019a) *Judgment of 19 November 2019, A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court), Joined Cases C-585/18, C-624/18 and C-625/18, ECLI:EU:C:2019:982*. Luxembourg: CJEU.
- Court of Justice of the European Union (2019b) *Judgment of 3 October 2019, Wasserleitungsverband Nördliches Burgenland and Others, Case C-197/18, ECLI:EU:C:2019:824*. Luxembourg: CJEU.
- Court of Justice of the European Union (2020) *Judgment of 28 May 2020, Land Nordrhein-Westfalen, Case C-535/18, ECLI:EU:C:2020:391*. Luxembourg: CJEU.
- Court of Justice of the European Union (2020a) *Judgment of 22 September 2020, Austria v. Commission, Case C-594/18 P, ECLI:EU:C:2020:742*. Luxembourg: CJEU.
- Court of Justice of the European Union (2020b) *Judgment of 25 June 2020, A and Others (Wind turbines at Aalter and Nevele), Case C-24/19, ECLI:EU:C:2020:503*. Luxembourg: CJEU.
- Court of Justice of the European Union (2020c) *Judgment of 23 April 2020, Associazione Avvocatura per i diritti LGBTI, Case C-507/18, ECLI:EU:C:2020:289*. Luxembourg: CJEU.

- Court of Justice of the European Union (2021a) *Judgment of 17 March 2021, One Voice and Ligue pour la protection des oiseaux, Case C-900/19, ECLI:EU:C:2021:211*. Luxembourg: CJEU.
- Court of Justice of the European Union (2021b) *Judgment of 6 October 2021, W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment), Case C-487/19, ECLI:EU:C:2021:798*. Luxembourg: CJEU.
- Court of Justice of the European Union (2021c) *Judgment of 11 November 2021, Gavanozov II, Case C-852/19, ECLI:EU:C:2021:902*. Luxembourg: CJEU.
- Court of Justice of the European Union (2021d) *Judgment of 14 January 2021, Stichting Varkens in Nood and Others, Case C-826/18, ECLI:EU:C:2021:7*. Luxembourg: CJEU.
- Court of Justice of the European Union (2022a) *Judgment of 29 March 2022, Getin Noble Bank, Case C-132/20, ECLI:EU:C:2022:235*. Luxembourg: CJEU.
- Court of Justice of the European Union (2022b) *Judgment of 22 February 2022, RS (Effet des arrêts d'une cour constitutionnelle), Case C-430/21, ECLI:EU:C:2022:99*. Luxembourg: CJEU.
- Court of Justice of the European Union (2022c) *Judgment of 8 November 2022, Deutsche Umwelthilfe (Approval of motor vehicles), Case C-873/19, ECLI:EU:C:2022:857*. Luxembourg: CJEU.
- Court of Justice of the European Union (2024) *Judgment of 25 June 2024, Ilva and Others, Case C-626/22, ECLI:EU:C:2024:542*. Luxembourg: CJEU.
- Eckes, C. (2013) 'EU Climate Change Policy: Can the Union Be Just (and) Green?' in Kochenov, D., Amtenbrink, F. (eds.) *The European Union's Shaping of the International Legal Order*. Cambridge University Press; <https://doi.org/10.1017/CBO9781139519625.012>.
- Eeckhout, P. (2002) 'The EU Charter of Fundamental Rights and the Federal Question', *Common Market Law Review*, 39(5), pp. 945–994; <https://doi.org/10.54648/5102448>.
- European Commission (2003) *Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters*. COM(2003) 624 final, 24 October 2003. Brussels: European Commission.
- European Commission (2014) *Withdrawal of obsolete Commission proposals*. Official Journal of the European Union, C 153/3, 21 May 2014. Brussels: European Commission.
- European Court of Human Rights (1982) *Judgment of 23 September 1982, Sporrang and Lönnroth v. Sweden, Applications nos. 7151/75 and 7152/75*. Strasbourg: ECtHR.
- European Court of Human Rights (1998) *Judgment of 28 October 1998, Pérez de Rada Cavanilles v. Spain, Application no. 116/1997/900/1112*. Strasbourg: ECtHR.
- European Court of Human Rights (2001) *Judgment of 2 October 2001, Hatton and Others v. the United Kingdom, Application no. 36022/97 (Heathrow night flights)*. Strasbourg: ECtHR.
- European Court of Human Rights (2016) *Judgment of 23 June 2016, Baka v. Hungary, Application no. 20261/12*. Strasbourg: ECtHR.

- European Parliament and Council (2001) *Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment*. Official Journal of the European Communities, L 197, 21 July 2001.
- European Parliament and Council (2006) *Regulation (EC) No 1367/2006 of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies*. Official Journal of the European Union, L 264, 25 September 2006.
- European Parliament and Council (2007) *Regulation (EC) No 715/2007 of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information*. Official Journal of the European Union, L 171, 29 June 2007.
- European Parliament and Council (2008) *Directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe*. Official Journal of the European Union, L 152, 11 June 2008.
- European Parliament and Council (2010) *Directive 2010/75/EU of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (recast)*. Official Journal of the European Union, L 334, 17 December 2010.
- European Parliament and Council (2012) *Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification)*. Official Journal of the European Union, L 26, 28 January 2012.
- European Parliament and Council (2021) *Regulation (EU) 2021/1767 of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies*. Official Journal of the European Union, L 356, 8 October 2021.
- European Union (2012a) *Charter of Fundamental Rights of the European Union*. Official Journal of the European Union, C 326, 26 October 2012.
- European Union (2012b) *Consolidated version of the Treaty on the Functioning of the European Union*. Official Journal of the European Union, C 326/49, 26 October 2012.
- General Court of the European Union (2016) *Order of 28 September 2016, PAN Europe and Others v. Commission, Case T-600/15, ECLI:EU:T:2016:601*. Luxembourg: General Court of the European Union.
- General Court of the European Union (2021) *Judgment of 27 January 2021, Poland v. Commission, Case T-699/17, ECLI:EU:T:2021:44*. Luxembourg: General Court of the European Union.
- Hertin, J., Berkhout, F. (2001) *Ecological Modernisation and EU Environmental Policy Integration*. Brighton: University of Sussex, SPRU.
- Humblet, F., Duggal K. (2020) 'If You Are Not Part of the Solution, You Are the Problem: Article 37 of the EU Charter as a Defence for Climate Change and Environmental Measures in Investor-State Arbitrations', *European Investment Law and Arbitration Review Online*, 5(1), pp. 265–295; [https://doi.org/10.1163/24689017\\_011](https://doi.org/10.1163/24689017_011).

- Jans, J. H. (2011) 'Stop the Integration Principle?', *Fordham International Law Journal*, 33(5), pp. 1533–1547.
- Krämer, L. (2012) *EU Environmental Law*. London: Sweet & Maxwell.
- Lock, T. (2019) 'Rights and Principles in the EU Charter of Fundamental Rights', *Common Market Law Review*, 56(5), pp. 1201–1226; <https://doi.org/10.54648/COLA2019100>.
- Pernice-Warnke, S. (2008) 'Der Zugang zu Gericht in Umweltangelegenheiten für Individualkläger und Verbände gemäß Art. 9 Abs. 3 Aarhus-Konvention und seine Umsetzung durch die europäische Gemeinschaft – Beseitigung eines Doppelstandards?', *Europarecht (EuR)*, 43(3), pp. 410–435; <https://doi.org/10.5771/0531-2485-2008-3-410>.
- Tridimas, T. (2014) 'Fundamental Rights, General Principles of EU Law, and the Charter', *Cambridge Yearbook of European Legal Studies*, 16, pp. 361–392; <https://doi.org/10.1017/S1528887000002676>.
- Van Dawitz, T., Paraschas, K. (2017) 'A Fresh Start for the Charter Fundamental Questions on the Application of the European Charter of Fundamental Rights', *Fordham International Law Journal*, 5, pp. 1396–1425.
- Vomáčka, V. (2023) 'Preliminary Reference on the Validity of EU Acts: A Modest Guide for the National Judge', *ERA Forum*, 23(3), pp. 413–438; <https://doi.org/10.1007/s12027-022-00722-9>.
- Von Bogdandy, A. (2000) 'The European Union as a Human Rights Organization? Human Rights and the Core of the European Union', *Common Market Law Review*, 37(6), pp. 1307–1338; <https://doi.org/10.54648/315870>.