

Stellingen behorende bij het proefschrift

JUSTICE FOR BOTH: EFFECTIVE JUDICIAL PROTECTION UNDER ARTICLE 47 OF THE EU CHARTER OF FUNDAMENTAL RIGHTS AND THE UNFAIR CONTRACT TERMS DIRECTIVE

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1. If we wish to understand effective judicial protection in European private law in all its facets, we should pay more attention to the practice of national civil courts and how they ensure “justice for both”: a fair balance between the (procedural) rights of both claimants and defendants and a genuine opportunity for the parties to present their case.
2. “Justice for both” also means that structural inequalities should be identified as such and removed or compensated for as much as possible – especially where consumers as weaker parties are involved, who might be prevented or deterred from exercising their rights not only due to a lack of knowledge or resources but also on account of restrictive procedural conditions limiting access to justice.
3. A fundamental rights perspective on effective judicial protection in EU (consumer) law requires the recognition of autonomous procedural safeguards that contribute to due process as an end in itself and should not be excessively or unreasonably restricted, with an eye for the link between substantive and procedural protection of EU (consumer) rights.
4. Article 47 of the Charter is a chameleon provision: its functions are context-specific, i.e. co-determined by the applicable legal framework and the way an issue is framed by the court that refers to it – which can only be discovered through comparative legal research.
5. The analysed case law from Spain in the wake of the 2008 financial crisis shows that for civil courts, the Unfair Contract Terms Directive may be a gateway to the Court of Justice and Article 47 in order to raise systemic issues that are more fundamental than a lack of *ex officio* control; e.g. if courts are completely side-lined in the enforcement of claims against consumer-debtors.
6. The (unfulfilled) potential of a reference to Article 47 lies first of all in its signalling function, where the national legal system, and in particular civil procedure, does not ensure justiciability in a broad sense: actual access to a court that can and must provide protection of the rights EU citizens, in their capacity as consumers, derive from EU law.
7. Civil courts in Netherlands could show more awareness of the discursive value of Article 47 in the context of the UCTD: it reinforces a rights-based, court-centred approach and calls for an open discussion of tensions between EU and national (procedural) law as well as the conflicting interests at stake, in light of procedural justice and the rule of law.
8. Article 47 is well-suited for the role and reasoning of civil courts, because it acknowledges that individual rights deserve protection in and of themselves and leaves space to take other factors into account than solely the objectives of EU (consumer) law.
9. Article 47 can be both a shield and a sword; what matters is in whose hands it is put. It should not be used as an argument against the need to restore the balance for consumers, which extends into the procedural realm.
10. Doctrinal legal research does not necessarily affirm vested interests; it exposes those interests and is thus essential for questioning them.
11. If one focuses exclusively on publications in English, one might overlook the richness of other languages and miss the chance to partake in national debates, e.g. on effective judicial protection in Spain and the Netherlands – which in turn inform the European debate.
12. The principle of *audi alteram partem* requires us to practice the art of listening while creating space to express ourselves, which is why we must cherish the ‘mute’ button in online meetings and classrooms.