EU ASYLUM PROCEDURES AND THE RIGHT TO AN EFFECTIVE REMEDY
THE EU RIGHT TO AN EFFECTIVE REMEDY

Article 47 of the Charter of Fundamental rights EU
General principle of EU law

Applies when national measure falls within scope of EU law
Art. 51(1) Charter, CJEU Case C-617/10 (Akerberg), para 21

Crucial role of the national courts
Principle of Effectiveness:
Exercise of a right granted by EU law may not be virtually impossible or excessively difficult
CJEU Case C-268/06 (*Impact*), paras 42-48

Right to **good administration** (Art. 41 Charter)
CJEU Case C-277/11 (*MM*), para 84, 89

- **Right to be heard:**
  CFI Case T-228/02 (*Modjahedines*), para 89

- **Right to a reasoned decision**
  CJEU Case C-300/11 (*ZZ*), para 53
INSPIRED BY INTERNATIONAL LAW

In particular Arts 6 and 13 ECHR and the ECtHR’s case-law concerning those Articles

Other treaties: Refugee Convention, ICCPR, ICRC, UNCAT

Court of Justice has paid very limited attention to non-binding views of UNHCR/ UN-Committees
But.. first reference to UNHCR’s view in CJEU case C-175/11 (H.I.D. and B.A.), para 55
Similar procedural questions arise in different fields of EU law

Case law of EU Courts establishes common principles (inspired by international law)

Case-law of EU Courts in one field is relevant in other fields of EU law
Three basic notions

1. The interests of the parties involved in the proceedings concerned must be balanced against each other.

2. The overall fairness of the procedure should be assessed.

3. The subject matter of the proceedings should be taken into account:
   - Nature of rights at stake
   - Characteristics of party concerned
STEP WISE APPROACH

1. Relevant provisions of EU law
2. Examination case-law EU Courts
3. Examination case-law ECtHR and views UNHCR and UN-Committees
4. Establish the meaning of the EU right to an effective remedy
5. Consequences for validity and interpretation of EU legislation
CONTACT and more information

Email: a.m.reneman@vu.nl

EU Asylum Procedures and the Right to an Effective Remedy