



# **Background paper Re-jus transnational training workshop: Toward effective justice in the fields of asylum and immigration**

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## Impact of the EU charter rights and general principles of EU law of equivalence, effectiveness and proportionality in asylum and immigration.

(Selected content from 'An introduction to the Common European Asylum System for Courts and Tribunals. A Judicial Analysis')

EASO's mission is to support the implementation of the Common European Asylum System (CEAS). The rights to an effective remedy and a fair trial are a fundamental part of the EU Charter, and the protection and promotion of these rights are covered by the provisions of three CEAS instruments; the Asylum Procedure Directive (APD), the Dublin III Regulation and the Reception Conditions Directive (RCD).

**Member States (MS) have to comply with the fundamental rights guaranteed by the EU Charter, where national legislation falls within the scope of the EU law.** The applicability of EU law entails the applicability of the fundamental rights guaranteed by the Charter. Besides, the CEAS is part of the legal system of the EU and is, therefore, an integral part of the MS legal systems, which courts are bound to apply. Hence, any action, which engages the provisions of the CEAS, is potentially justiciable from the standpoint of the Charter before national courts and tribunals.

Similarly, **the main responsibility for the respect of fundamental rights deriving from EU law and international human rights law rests with national courts and tribunals.** A practical example is the *case of Arslan*<sup>1</sup>. The CJEU stated that it is for MS to establish, in full compliance with their obligations arising from both Int'l and EU law, the grounds on which an asylum seeker may be detained or kept in detention.

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<sup>1</sup> Judgment of 30 May 2013, Case C-534/11, Mehmet Arslan v Policie ČR, ECLI:EU:C:2013:343,



The rights of the applicants have to be protected throughout the entire asylum procedure and, to this effect, the APD provides a list of basic principles and guarantees. **Chapter V of the APD is of prime importance to the judiciary**; it recognises the right to an effective remedy before a court or tribunal and against all final decisions adopted at first instance concerning the grant and withdrawal of international protection.

The compliance with this right entails that an adequate remedy provides

- for a full and *ex nunc* examination
- of both facts and point of law, as well as,
- an analysis of the international protection needs pursuant to the QD where applicable.

National courts will also need to take into account the general principles of EU law to access to justice. In this respect, more favourable provisions of Member State's national law may be determinant to identify the principles applicable to the provisions of an effective remedy, provided that they are compatible with the Directives.



There is no doubt that the field of international protection is a complex area of law and many aspects of international protection, which are regulated by EU Law, are also the subject of the Refugee Convention, other international treaties and national law. This **inter-relationship between EU law and international law** can be appreciated in the EU Fundamental Rights Charter, specifically in its Article 18, which states that the right to asylum shall be guaranteed with due respect to the Refugee Convention and in accordance with the TEU and the TFEU.

The function of national courts and tribunals cannot only be limited to the interpretation and application of the relevant provisions of EU law. National courts and tribunals need to take into consideration the inter-relationship of EU law with international law, national constitutional law, and the implications for the interpretation of CEAS provisions. National law provisions with more favourable standards for the determination of international protection rights and the procedures for deciding on it may be relevant, although, **their applicability is subject to their compatibility with the CEAS Directives**.

In addition, and according to the CJEU ruling on the case *Stefano Melloni v Ministerio Fiscal*<sup>2</sup>, MS do **not** have a **general authorization to apply a standard of protection of fundamental rights guaranteed by its constitution** even if the standard is higher than that deriving from the EU charter. Such an interpretation would undermine the principle of primacy of EU law. The national law, even of constitutional order, cannot be allowed to undermine the effectiveness of the EU law on the territory of MS.

In this context, members of national courts and tribunals may be required to consider the above a preliminary issue when ruling whether more favourable standards may apply under the CEAS.

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<sup>2</sup> Judgment of 26 February 2013, Grand Chamber, Case C-399/11, *Stefano Melloni v Ministerio Fiscal*, ECLI:EU:C:2013:107.



Consequently, to achieve a uniform protection status identified by conventional procedures, there is **a necessity for judicial dialogue**.

We can distinguish two types of judicial dialogue:

- The vertical dialogue between national courts and the CJEU, where national courts shall make submissions to the CJEU before a decision is reached and implement the CJEU judgment at the national level.
- By contrast, horizontal dialogue between MS' tribunals shall be apt when the CJEU has yet to interpret relevant provisions of CEAS law. An example of this is the *case of Abdulla and others*<sup>3</sup> where the CJEU did not consider the issue of cessation of refugee status in all its aspects, and therefore, the decisions adopted by national courts in this regard may provide a useful starting point.
- In the same way, there are some national courts' judgments, which other national courts may wish to take into account.

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<sup>3</sup> Judgment of 2 March 2010, Grand Chamber, Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08, Aydin Salahadin Abdulla and Others v Bundesrepublik Deutschland, ECLI:EU:C:2010:105.