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Challenges for new member states in the application of the **CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**

the case of

SERBIA



CHALLENGES FOR NEW EU MEMBER STATES APPLYING THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

THE CASE OF SERBIA AS A CANDIDATE COUNTRY

This guideline has been prepared within the framework of the project “Strengthening regional judicial cooperation in the Western Balkans for effective litigation before the Court of Justice of the European Union and the implementation of the EU Charter of Fundamental Rights”, with the support of the Government of the Kingdom of the Netherlands.

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ACRONYMS AND ABBREVIATIONS

FRA – European Union Agency for Fundamental Rights

ECtHR – European Court of Human Rights

Convention – European Convention on Human Rights and Fundamental Freedoms

Charter – Charter of Fundamental Rights of the European Union

Commission – European Commission

CJEU – Court of Justice of the European Union

TEU – Treaty on European Union

TEC – Treaty on European Community

TECSC – Treaty establishing the European Coal and Steel Community

TFEU – Treaty on the Functioning of the European Union

1. INTRODUCTION

In 1948, the United Nations proclaimed the Universal Declaration of Human Rights. To this day, it remains the symbolic foundation of modern human rights and underpins numerous international and regional agreements and instruments dedicated to human rights protection. On the 50th anniversary of the Declaration, a group of fundamental rights experts appointed by the European Commission published a report titled “Affirming Fundamental Rights in the European Union”¹, which advocated for a comprehensive, judicial approach to human rights “to make their overriding importance and relevance more visible to the Union’s citizens.”² The drafting of the Charter, envisioned as the

¹ “Affirming fundamental rights in the European Union – Time to act”, released on EU publications website: 1999-06-04, available at: <https://op.europa.eu/en/publication-detail/-/publication/c45c795b-b40d-4aaa-9ada-6dbce53f3a68>

² Cologne European Council 3-4 June 1999 Conclusion of the Presidency, available at: https://www.europarl.europa.eu/summits/kol1_en.htm

“European Charter of Human Rights”, began in 1999, building on the protection of fundamental rights already embedded in the legal systems of the EU and its Member States. The goal was to create a single document that encompasses all the rights developed over the years through the case law of the Court of Justice of the European Union (CJEU), as well as those rooted in the common constitutional traditions of the EU Member States and international instruments of particular importance for the EU region. Finally, in 2000, the Charter of Fundamental Rights of the European Union was adopted, serving as a guideline for human rights protection. Since then, it has functioned not only as an instrument for individuals to safeguard their human rights but also as an opportunity for the EU to fulfil its role in the protection and promotion of human rights and their application. In response to the EU’s growing public powers, it was crucial for human rights to become legally binding on EU institutions and bodies that exercise public authority. Accordingly, the Charter became legally binding on 1 December 2009. As a result, the EU institutions and bodies, as well as the EU member states when implementing European law, are obligated to ensure the rights and freedoms listed in the Charter. Consequently, the Charter has emerged as the most recent and visible indicator of the EU’s commitment to protect and promote fundamental human rights. It represents a comprehensive approach to civil, political, social, economic and cultural rights, directed at both EU institutions and bodies, as well as EU member states during the implementation of European legislation.

Regarding the fundamental rights of EU citizens, the Charter functions almost like a European constitution. Its relevance is growing, not only because it safeguards traditional fundamental rights but also because it addresses issues pertinent to the 21st century. Moreover, its practical significance is already evident, as all EU citizens can rely on the Charter in addition to their national constitutions. However, the Charter’s broad scope presents certain challenges regarding effective implementation. Legal experts and other stakeholders continue to explore the Charter’s role and ways to ensure its full operation.

The EU Agency for Fundamental Rights (FRA) plays a key role in monitoring and promoting the Charter. It has developed accessible tools such as Charterpedia and e-Instructions to assist legal professionals to understand its provisions and application, including relevant case law.

The binding nature of the Charter on Member States when implementing EU legislation significantly affects Serbia as a candidate country. Serbia is actively engaged in aligning its legislation with the *acquis communautaire*. As Serbia adopts and integrates EU directives and regulations into its legal order, its activities in these areas increasingly fall under the direct jurisdiction of the Charter. This situation results in a *de facto* extension of the Charter's influence on Serbian law, even before full membership, thereby imposing a form of conditional sovereignty that necessitates national legislative autonomy to comply with Charter standards during the alignment process. Therefore, Serbia should not view alignment with the Charter as a future obligation, but rather as an immediate and ongoing necessity that shapes its current legislative and judicial reforms, particularly within Chapter 23.

The aim of this publication is to identify the challenges faced by new EU Member States that have acceded to the EU over the past 20 years (Bulgaria (2007), Romania (2007) and Croatia (2013)) in applying the Charter. Additionally, it seeks to clarify in the relevance of the Charter at both national and EU legislative levels. To this end, a methodology has been developed to familiarise judges, prosecutors, legal experts and decision-makers with the content of the Charter and explain the key legal, procedural and political barriers to help stakeholders identify areas where the application of certain provisions of the Charter raises standards for rights protection, thus creating added value in light of Serbia's path toward EU integration.

This publication is the result of an extensive analysis of existing literature, legislation and case law concerning the Charter, alongside various reports on its application in new Member States. A dedicated section provides an overview of the current implementation of the Charter in Serbia, highlighting key challenges and proposing amendments to existing laws,

legal acts and judicial procedures to better align with the text and application of the Charter. The authors wish to present the Charter as a living instrument, to be utilised by practitioners, trainers, civil society organisations, individuals and anyone interested in its provisions.

2.CHARTER OF FUNDAMENTAL RIGHTS – FIELD OF APPLICATION AND SIGNIFICANCE OF ARTICLE 51 OF THE CHART

Under Article 6(3) of the Treaty on the European Union (TEU), fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and derived from the constitutional traditions common to the Member States, constitute general principles of the EU law. The Charter of Fundamental Rights is a contemporary document that outlines 50 fundamental rights and principles. Additionally, it includes four articles concerning the interpretation and application of these provisions. The Charter consists of seven chapters: Dignity (five articles), Freedom (14 articles), Equality (seven articles), Solidarity (12 articles), Citizens’ rights (eight articles), Justice (four articles) and General provisions (four articles).³

The Charter was proclaimed by the European Parliament, the European Commission and the EU Member States, which together comprise the European Council, at a meeting in Nice on 7 December 2000. Since then, it has been recognised as a guideline for human rights protection. The Charter reflects the rights enshrined in the European Convention on Human Rights, the European Social Charter, case law of the CJEU, existing provisions of EU law and the common constitutional traditions of all Member States

Under Article 6 (1) of the TEU, “[t]he Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of

³ See: <http://www.eucharter.org> i <http://ec.europa.eu/justice/fundamental-rights/charter>

disclosure of accounting documents¹¹, obligation to issue fingerprints for a travel document¹² and mandatory retirement age¹³, among others. Before the CJEU, the Charter is frequently invoked in the following fields: social policy (e.g. employment and working conditions, transfer of undertakings, parental consent for the employment of minors); asylum and migration, consumer protection, judicial cooperation in civil matters (e.g. jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility); taxation (value added tax); intellectual property; agriculture; the environment; data protection and judicial cooperation in criminal matters (European arrest warrant). Since EU law is predominantly implemented at the national level, the EU obligations must extend to the acts passed by national bodies provided they are deemed helpful in implementing EU law. Otherwise, the Charter would not be applicable in numerous situations regulated under EU law and there would be a void in the protection of fundamental rights in EU law. Therefore, the obligation of Member States to comply with the Charter is a necessary consequence of the EU obligations concerning fundamental rights. The Charter supplements the Member States' obligations concerning human rights under their constitutions and the international agreements on human rights protection.¹⁴

Under Article 52(5) of the Charter, there are “rights” and “obligations”. They are regulated under two types of provisions, both legally binding. The rights recognised by the Charter must be “respected” while the

¹¹ See: C-418/11, Texdata Software GmbH, 26 June 2013, available at: <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-418/11>

¹² See: C-291/12, Michael Schwarz/Stadt Bochum, 17 September 2013, available at: <https://curia.europa.eu/juris/liste.jsf?num=C-291/12>

¹³ See: C-401/11, Blanka Soukupová/Ministerstvo zemědělství, 11 April 2013, available at: <https://curia.europa.eu/juris/liste.jsf?language=en&T,F&num=C-401/11>

¹⁴ Applying the Charter of Fundamental Rights of the European Union in Law and Policymaking at National Level – Guidance, European Union Agency for Fundamental Rights (FRA), 2020, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-charter-guidance_en.pdf

principles should be “observed”¹⁵. Individuals may directly invoke rights before national courts, but not principles. The Explanations to the Charter (an interpretative document originally prepared under the authority of the Praesidium of the Convention which drafted the Charter)¹⁶, explicitly qualify certain provisions as Charter principles. For other provisions of the Charter, it is still unclear whether they are rights or principles under Article 52(2) of the Charter. Further case law by the CJEU will provide increasing clarity in this regard. In any event, it would be incorrect to assume, for instance, that the provisions listed in Chapter IV (Solidarity) all have the status of principles. Some provisions are explicitly identified in the Explanations relating to the Charter as Charter principles: Articles 25 (rights of the elderly), 26 (integration of persons with disabilities) and 37 (environmental protection). Some provisions are mentioned in the Explanations as provisions containing “both elements of a right and of a principle”: Article 23 (equality between women and men), Article 33 (family and professional life) and Article 34 (social security and social assistance). The principles outlined in the Charter “may be invoked before a court” solely in the context of interpreting implementing acts and assessing their validity against the Charter’s requirements. In other words, a Charter principle does not give rise to direct claims before courts for positive action by the Union’s institutions or Member State authorities; it can only be cited before a national court when it is combined with an implementing act adopted by either the EU or national authorities.¹⁷ Consequently, these principles are only relevant when they are legally prescribed; they do not automatically compel positive action. This limitation stems from a longstanding debate regarding economic, social and cultural rights, which have often been viewed as mere pragmatic formulations that evolve over time. The values expressed in these

¹⁵ Charter of Fundamental Rights of the European Union, OJ C 326, 26 September 2012, Article 51 (1).

¹⁶ EU (2007), Explanations relating to the Charter of Fundamental Rights, OJ C 303, 14 December 2007, pp. 17-37.

¹⁷ Opinion of Advocate General Cruz Villalón delivered on 18 July 2013, at the ECHR, on case C-176/12, available at:

<https://curia.europa.eu/juris/liste.jsf?language=en&num=C-176/12>

principles are shared across the entire Community, but their implementation has been entrusted to individual Member States (or to the EU when it falls within its jurisdiction). Therefore, to invoke an infringement of a principle in any court, one must reference a provision that implements that principle.¹⁸

The EU recognises and respects the following rights: the right of the elderly to lead a life of dignity and independence and to participate in social and cultural life; the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community; social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age and in the case of loss of employment; the right to social and housing assistance; access to services of general economic interest in order to promote the social and territorial cohesion of the Union. Article 52 of the Charter of Fundamental Rights also sets out the guidelines concerning the relationship between the Charter and the Convention, as well as between the Charter and the constitutional traditions common to the Member States. As for the former, the Charter prescribes: “In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention.” In addition, “[t]his provision shall not prevent Union law providing more extensive protection.” Thus, EU law can only set higher but not lower protection standards. As regards “constitutional traditions common to the Member States”, fundamental rights resulting therefrom “shall be interpreted in harmony with those traditions.” Article 53 of the Charter of Fundamental Rights (Level of Protection) contains a common human rights treaty clause, stating that the Charter shall not “be interpreted as restricting or adversely affecting human rights and fundamental

¹⁸ Jacqueline Dutheil de la Rochere, Challenges for the Protection of Fundamental Rights in the EU at the Time of the Entry into Force of the Lisbon Treaty, *Fordham International Law Journal* Volume 33, Issue 6, 2011. available at: <https://core.ac.uk/download/pdf/144229279.pdf>

freedoms” as recognised in other international (or EU) agreements or domestic constitutions.¹⁹

3.RELATIONSHIP BETWEEN THE CHARTER AND OTHER INTERNATIONAL INSTRUMENTS AND NATIONAL LEGISLATION IN RESPECT OF IMPLEMENTATION

Regarding the level of protection, Article 53 of the Charter states: “Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms and by the Member States’ constitutions.” Other international legal instruments can also serve as minimum standards and are in any case open to interpretation. The level of protection ensured by other human rights instruments “to which the Union or all the Member States are party” should be maintained²⁰. The CJEU considers these instruments when applying fundamental rights of the EU. Significant international conventions include the International Covenant on Civil and Political Rights²¹, International Covenant on Economic, Social and Cultural Rights²², Convention on the Elimination of

¹⁹ Hofbauer, J. A., Bojarski, L., & Mileszyk, N. (Eds.), *The Charter of Fundamental Rights as a Living Instrument – Guidelines for Civil Society*, Rome-Warsaw-Vienna, 2014, available at: https://gmr.lbg.ac.at/wp-content/uploads/sites/12/2021/09/cfreu_guidelines.pdf

²⁰ *Ibid.*

²¹ The UN General Assembly (UNGA) (1966), *International Covenant on Civil and Political Rights*, 16 December 1966, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

²² UNGA (1966), *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

All Forms of Discrimination against Women²³, International Convention on the Elimination of All Forms of Racial Discrimination²⁴, Convention against Torture²⁵ and Convention on the Rights of the Child²⁶, as well as accompanying optional protocols. Convention on the Rights of Persons with Disabilities²⁷ is particularly important, as the EU itself has signed it. Numerous articles of the Charter reflect the provisions included in international human rights instruments, making them crucial for interpreting specific provisions of the Charter. Article 78 of the TFEU explicitly refers to the Geneva Convention (concerning a common policy on asylum, subsidiary protection and temporary protection), while Article 151 of the TFEU (Social Policy) refers to the European Social Charter. When it comes to the European instruments, the EU is also a signatory to the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention).²⁸

²³ UNGA (1979), Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

²⁴ UNGA (1965), International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

²⁵ UNGA (1984), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

²⁶ UNGA (1989), Convention on the Rights of the Child, 20 November 1989; available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>; see also CJEU, C-540/03, European Parliament v Council of the European Union (Grand Chamber), 27 May 2006, t. 37, available at: <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-540/03>

²⁷ UNGA (2006), Convention on the Rights of Persons with Disabilities (CRPD), 13 December 2006, available at: <https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd>

²⁸ Council of Europe Convention on preventing and combating violence against women and domestic violence, a series of the Council of Europe treaties, No. 210, Istanbul,

Under Article 52(4) of the Charter, “[i]n so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.” This provision allows national authorities and courts the discretion to apply their own national standards for the protection of fundamental rights. The level of protection established by the Charter serves as a minimum standard for national measures implementing EU law²⁹. Therefore, when an EU legal act requires national implementing measures, national authorities and courts remain free to apply higher national standards of protection of fundamental rights. However, according to the case law of the CJEU, this applies only under the condition that “the level of protection provided for by the Charter, as interpreted by the Court and the primacy, unity and effectiveness of EU law are not thereby compromised”. The CJEU derives this conclusion from the principle of primacy, which asserts that rules of national law – even those enshrined in a constitutional order – must not undermine the effectiveness of EU law within that state’s territory.

The application of the Charter in the legislative process not only ensures that national legislation aligns with the Charter but also contributes to the promotion of the Charter. The Charter provides added value compared to other instruments by enhancing the visibility of rights, introducing certain rights to existing sets and leveraging the strength of EU law. Many of the additional rights included in the Charter are already recognised in the case law of the ECtHR or national courts. However, the Charter increases the visibility of rights and principles because it is a newer, more modern instrument that unities a large number of political, civil, economic and social rights and principles already recognised in the EU legal order within a single document. In addition, it includes rights that are specific to the EU, such as certain rights granted to Union citizens by the EU Treaties.

11 October 2011, available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c>

²⁹ EU (2012), Charter of Fundamental Rights of the European Union, OJ C 326, 26 September 2012, Article 53.

Some of the rights that are available in the Charter but rarely in the texts of national constitutions or human rights instruments include: workers' rights to information and consultation within the undertaking (Article 27 of the Charter); protection in the event of unjustified dismissal (Article 30 of the Charter); prohibition of child labour and protection of young people at work (Article 32 of the Charter); access to services of general economic interest (Article 36 of the Charter); consumer protection (Article 38 of the Charter), etc.

Where the Charter incorporates rights inspired by international or other European instruments, such as the Convention, it sometimes broadens these rights. For example, Article 6 of the Convention guarantees the right to a fair hearing and the right of defense only for civil claims and in the context of a criminal prosecution. In contrast, Article 47 of the Charter goes further: within the scope of EU law, it guarantees the right to an effective remedy and to a fair trial across all domains, including administrative procedures such as asylum and migration cases, as well as taxation law. Furthermore, Article 20 of the Charter establishes the principle of equality before the law. In addition, Article 21 contains detailed and explicit grounds for non-discrimination – including age, disability and sexual orientation – that are not included in traditional international human rights instruments from earlier generations. This non-discrimination norm is complemented by specific provisions in Article 23, which mandates that equality between women and men must be ensured in all areas, including employment, work and pay. Additionally, Article 24 codifies the essence of children's rights as enshrined in the Convention on the Rights of the Child, while Article 25 addresses the "rights of the elderly," and Article 26 pertains to the "integration of persons with disabilities".

The interpretation of certain fundamental rights by the CJEU within the specific context of the EU legal order may sometimes yield different results compared to other legal systems. This serves as an important reason for verifying whether EU law applies to any human rights issue. For instance, in the Soukupová case, the CJEU examined Czech law on

pension insurance, which determines the retirement age in relation to granting support for early retirement from farming based on an EU regulation³⁰. Under Czech pension legislation, the retirement age varies depending on the applicant's sex and, for women, the number of children they have. The CJEU ruled that, in the context of the EU's support for early retirement, the "normal retirement age" was defined differently based on the applicant's gender and, for female applicants, the number of children raised. This was found to be incompatible with the Union's general principle of non-discrimination. In a previous case, the ECtHR ruled that the Czech old-age pension law was compatible with Article 14 in conjunction with the right to property outlined in Article 1 of Protocol No. 1 of the Convention³¹. The *Soukupová* case illustrates that a national law can align with the guarantee of non-discrimination in the enjoyment of the rights enshrined in the Convention while simultaneously being deemed incompatible with the principles of equality and non-discrimination as guaranteed by the EU legal order in a specific context.

When it comes to the effect of the Charter within national law, it does not depend on the constitutional law of the Member States but follows from EU law and is therefore based on the principles of direct effect and supremacy. National courts are obliged to interpret national measures in conformity with the Charter whenever they come within the scope of EU law, as interpreted by the CJEU. This means that national measures can be reviewed in the light of the Charter whenever they come within the scope of EU law. When the provisions of the Charter are sufficiently precise and unconditional, they can have a direct effect, meaning that national norms conflicting with the Charter are considered inapplicable. This direct effect allows individuals to invoke the Charter in proceedings before national courts, potentially leading to the establishment of rights not available under

³⁰ CJEU, C-401/11, Blanka Soukupová/Ministerstvo zemědělství, 11 April 2013, available at: <https://curia.europa.eu/juris/liste.jsf?language=en&T,F&num=C-401/11>

³¹ European Court of Human Rights, Andrlje/Češka Republika, No. 6268/08, 20 May 2011, available at: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%222011%2F08%22%22%5D%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%2C%22itemid%22:%5B%22001-103548%22%5D%7D>

national law. If discrimination contrary to EU law is established and measures to restore equal treatment have not been implemented, a national court is obligated to set aside any discriminatory provisions of national law. In such cases, the court does not need to request or await prior removal by the legislature and must apply the same arrangements to members of the disadvantaged group as those enjoyed by individuals in the favoured group. An illustrative example of this is the case of *Milkova v Bulgaria*, which involved the Bulgarian Labour Code. This law provided *ex ante* protection against dismissal for employees with disabilities, but that guarantee did not extend to civil servants with the same disabilities. The CJEU determined that if the referring court found a failure to adhere to the principle of equal treatment, that court had to restore equality by granting civil servants with disabilities – disadvantaged by the current system – the same benefits as those enjoyed by employees with disabilities, who were favoured by that system. As a result, the obligation to comply with EU law necessitates extending the scope of national regulations that protect employees with specific disabilities, ensuring that these protections also benefit civil servants with the same disabilities.³²

It is important to note that Member States can be held liable for damages incurred by individuals due to violations of the Charter. A Member State is required to provide compensation for damages when the breached law was intended to grant rights to individuals and the breach is sufficiently serious—meaning that the Member State has manifestly and gravely disregarded the limits of its discretion. Furthermore, there must be a direct causal link between the breach of the state's obligations and the damages suffered by the affected parties.³³

³² See case C-406/15 *Milkova v Bulgaria*, available at:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=188752&doclang=EN#:~:text=The%20system%20applicable%20to%20employees,servants%20with%20the%20same%20disability.>

³³ In the context of violation of fundamental rights, see the Judgment of the Court of Justice, C-300/04, *M. G. Eman i O. B. Sevinger/College van burgemeester en wethouders van Den Haag* (Grand Chamber), 12. juna 2006, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62004CJ0300>

4. CHALLENGES IN IMPLEMENTING THE CHARTER OF FUNDAMENTAL RIGHTS IN CROATIA

The Croatian Constitution recognises that the exercise of rights stemming from the European Union *acquis communautaire* is equivalent to the exercise of rights under Croatian law. Additionally, it mandates that all legal acts and decisions adopted by the Republic of Croatia within European Union institutions be applied in accordance with the *acquis communautaire*. The Constitution designates Croatian courts as entities responsible for protecting subjective rights based on the European Union *acquis communautaire*, while governmental agencies, bodies of local and regional self-government and legal entities vested with public authority apply EU law directly. Therefore, it is not surprising that the Charter has been directly applied by the Croatian Constitutional Court. Although its application has been relatively limited – primarily focusing on cases related to migration and asylum – there has been a noticeable increase in its use. Moreover, national judges, parliamentarians, government officials and civil society actively utilise the Charter, although its overall application remains somewhat restricted.³⁴

4.1 Application of the Charter outside the courts since the accession of the Republic of Croatia to the EU

Although the Charter of Fundamental Rights has been legally binding for Croatia since its accession to the EU in 2013, its application has so far been relatively limited and general awareness of the Charter remains low. Nonetheless, this situation has gradually begun to change, with a noticeable increase in the Charter's use within Croatia's legal and political systems from 2017 onwards. On a positive note, it is clear that Croatia has

³⁴ *Primjena Povelje EU-a o temeljnim pravima u Hrvatskoj – stanje*, Pučka pravobraniteljica, projekt „Podrška nacionalnim institucijama za ljudska prava u praćenju ljudskih prava i vladavine prava“, EEA and Norway Grants Fund for Regional Cooperation, 2022.-2024, studeni 2023, available at: <https://www.ombudsman.hr/wp-content/uploads/2024/04/Pocetno-izvjesce-o-potencijalu-jacanja-temeljnih-prava-snaznijom-primjenom-EU-Povelje-o-temeljnim-pravima.pdf>

made efforts to integrate the Charter into various spheres of governance and public administration. For instance, the establishment of designated Charter focal points demonstrates a commitment to promoting both awareness and implementation of fundamental rights. Additionally, the National Plan for the Protection and Promotion of Human Rights and Combatting Discrimination until 2027 references the Charter in its introductory sections. The corresponding Action Plan on Human Rights outlines specific measures related to the Charter, including initiatives to raise awareness of its application and to strengthen the capacity of staff working with EU funds to implement the rights recognised by the Charter. Nonetheless, the overall number of examples indicates that the Charter's application outside the courts remains sporadic and often ad hoc in Croatia. This raises questions about the systematic use of the Charter across various policy areas. In instances where the Charter has been referenced in legislative procedures, the impact and effectiveness of these references can often be unclear. This emphasises the need for greater scrutiny to determine whether the Charter is being used merely as a formality or if it genuinely influences the outcomes of public policies and safeguards fundamental rights.

The following examples of adopted legislation illustrate how harmonisation with EU standards and the protection of fundamental rights are being addressed in practice.

4.1.1. The Electronic Communications Act³⁵

The Electronic Communications Act was adopted in 2022, with the Charter playing a significant role in shaping Article 7. It involved the transposition of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code. However, the proposal for the law clarifies that Article 100(2) of the Directive was not incorporated because “the application of the Charter and the principles of proportionality in limiting rights should not be regulated by special legislation since the Charter is

³⁵ Narodne novine 76/2022, available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2022_07_76_1116.html

already part of Croatian law and its provisions have direct effect, while the principle of proportionality in the restriction of established rights is thoroughly embedded in the practice of the Constitutional Court of the Republic of Croatia.”

4.1.2 The Fee Comparability, Payment Account Transfer and Basic Account Access Act³⁶

The law refers to Article 21(1) (Non-discrimination) of the Charter: “Credit institutions shall not discriminate against consumers legally resident in the Union by reason of their nationality or place of residence or by reason of any other ground as referred to in Article 21 of the Charter of Fundamental Rights of the European Union, when those consumers apply for or access a payment account.”

4.1.3 The Judicial Cooperation in Criminal Matters with the EU Member States Amending Act

The Charter has been used as an argument to amend the law to ensure the full protection of the presumption of innocence and the right to defence in criminal proceedings, particularly when issuing a European Arrest Warrant or a European Investigation Order. Any restriction of these rights through investigative measures, as stipulated by the relevant Directive, must strictly align with the requirements of Article 52 of the Charter, especially regarding necessity, proportionality and legitimate objectives. The Croatian Government’s final law proposal included explicit references to Articles 48 and 52 of the Charter as the basis for introducing Article 3a, which affirms the principle of respecting fundamental rights, stating that the procedures established by the law must not undermine the obligation to respect fundamental rights and freedoms recognised in the Charter. The Judicial Cooperation in Criminal Matters with the EU Member States Amending Act, based on this proposal, was adopted in September 2017.³⁷ References to the Charter’s provisions

³⁶ Narodne novine 70/2017, available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2017_07_70_1659.html

³⁷ Narodne novine 102/2017.

remain within the scope of the European Investigation Order and the European Arrest Warrant.³⁸

4.1.4 The Protection of Population against Infectious Diseases Draft Amending Act³⁹

This draft law proposes that, in certain legally defined situations, vaccination against infectious diseases should be voluntary rather than mandatory. Supporters of this change – namely, a group of MPs – have invoked provisions of the Charter to argue that the current law does not align with international and EU legal standards. Their proposal draws on the key principles of the Charter, including the respect for human dignity (Article 1), the right to the integrity of the person (Article 3) and the prohibition of torture and inhuman or degrading treatment or punishment (Article 4), among others. However, the government ultimately did not endorse this legislative initiative, clarifying that patients' right to information and the procedures for providing consent to medical treatment are already regulated by other legislative acts.

4.2. Application of the Charter by national courts since Croatia's accession to the EU

The following court decisions are good examples of the effective application of the Charter in Croatian judicial practices. They demonstrate that the Charter plays a pivotal role in safeguarding the rights of individuals and upholding the principles enshrined in EU law, ensuring consistency and respect for fundamental values across all Member States. The Charter is explicitly cited in matters relating to equality, effectiveness of judicial proceedings, data protection and access to remedies and the right to a fair

³⁸ *Primjena Povelje EU-a o temeljnim pravima u Hrvatskoj – stanje*, Pučka pravobraniteljica, projekt „Podrška nacionalnim institucijama za ljudska prava u praćenju ljudskih prava i vladavine prava“, EEA and Norway Grants Fund for Regional Cooperation, 2022.-2024, studeni 2023, available at: <https://www.ombudsman.hr/wp-content/uploads/2024/07/Pocetno-izvjesce-o-potencijalu-jacanja-temeljnih-prava-snaznijom-primjenom-EU-Povelje-o-temeljnopravima.pdf>

³⁹ Narodne novine 79/07, 113/08, 43/09, 130/17, 114/18, 47/20, 134/20, 143/21, available at: <https://www.zakon.hr/z/1067/zakon-o-zastiti-pucanstva-od-zaraznih-bolesti>

trial. These decisions underline how the Charter shapes legal reasoning, guiding national courts to align domestic legislation with EU standards and to ensure the protection of individual rights within the broader European legal order. Ultimately, these decisions show how the Charter serves as a foundational reference in legal argumentation and decision-making at the national level, highlighting the influence of the EU principles in shaping Croatian case law.

4.2.1. Constitutional Court of the Republic of Croatia – U-I-60/1991 etc. (2017)

Between 1991 and 2016, seven applicants – including individuals and civil society organisations – challenged the constitutionality of the legislation regulating decisions on childbirth, which permits abortion on request during the first ten weeks of pregnancy and after that if indicated by a doctor. The applicants claimed that the Health Care Measures for Exercising the Right to a Free Decision on Giving Birth Act (the Abortion Act)⁴⁰ was unconstitutional as Article 21 of the Constitution grants the right to life as a paramount human right. The key legal issue was whether the Abortion Act was compatible with the Constitution. The Court ruled that the legislation allowing abortion on request during the first 10 weeks of pregnancy and thereafter for medical, ethical and eugenic reasons was compatible with the Constitution. The Court determined an appropriate balance between a pregnant woman's right to privacy and the public interest in safeguarding unborn life, which is recognized as a constitutional value. It also instructed the legislator to introduce educational and preventative measures to ensure that abortion remains the exception. The Court called on Parliament to draft new legislation within two years, reflecting contemporary circumstances and challenges. In its decision, the Constitutional Court states that “Article 1 of the Charter of Fundamental Rights of the European Union (Official Journal of the European Union, C 83/389, 30/03/2010) reads: ‘Human dignity is inviolable. It must be respected and protected’. Within the European Union, human dignity is recognised as the foremost non-derogable and universal value. In this case,

⁴⁰ Narodne novine 18/78 and 88/09.

the Court has referred to its case law to reaffirm the right to human dignity as absolutely protected, non-derogable and incomparable. For that purpose, the Court has referenced Article 1 of the Charter.”⁴¹

4.2.2. Constitutional Court of the Republic of Croatia – U-III-208/2018 (2018)

Nurettin Oral, a citizen of the Republic of Turkey residing in the Swiss Confederation, was detained while crossing the Croatian border with Serbia after being flagged in a security database due to the arrest warrant issued by Turkish authorities. The court of first instance concluded that all legal prerequisites were met for his extradition to Turkey, where he faced prosecution for violating national unity and territorial integrity. The Supreme Court rejected the applicant’s appeal and approved the extradition. Mr Oral then appealed to the Constitutional Court, challenging whether the decisions of the lower courts complied with the International Legal Assistance in Criminal Matters Act. In his constitutional complaint, Mr Oral contested rulings by the County Court in Vukovar and the Supreme Court of Croatia, which had both determined that the conditions for extradition were satisfied. The Constitutional Court upheld the appeal, quashed the previous decisions, and remitted the case to the County Court for a retrial. The central issue in Mr Oral’s complaint was that the Croatian courts had failed to consider his refugee status when rendering their decisions. The Constitutional Court found that the lower courts’ reasoning contradicted the provisions of the Constitution of the Republic of Croatia regarding the right to a fair trial (Article 29), the extradition of third-country nationals (Article 33(2)), and the application of EU law (Article 141c). In light of the critical importance of the principle of mutual trust among the signatory states of the Dublin Agreement, and considering that the Swiss authorities had granted the applicant refugee status in accordance

⁴¹ *Primjena Povelje EU-a o temeljnim pravima u Hrvatskoj – stanje*, Pučka pravobraniteljica, projekt „Podrška nacionalnim institucijama za ljudska prava u praćenju ljudskih prava i vladavine prava“, EEA and Norway Grants Fund for Regional Cooperation, 2022.-2024, studeni 2023, available at: <https://www.ombudsman.hr/wp-content/uploads/2024/07/Pocetno-izvjesce-o-potencijalu-jacanja-temeljnih-prava-snaznijom-primjenom-EU-Povelje-o-temeljnim-pravima.pdf>

with the Dublin principles, along with the presumption that these authorities respected the applicant's fundamental rights, the Constitutional Court ruled that the decision to extradite Mr Oral under these circumstances would violate Article 33(2) of the Croatian Constitution. . Additionally, it found that such action would contravene the principle of non-refoulement, which Croatia is obligated to uphold not only as an EU Member State but also as a signatory to the Geneva Convention and its 1967 Protocol. The Constitutional Court emphasized that the CJEU had underlined the significance of mutual trust among the Member States involved in the Dublin Agreement, which is part of the Common European Asylum System. In a pivotal ruling in this domain – specifically in C-411/10 N.S. v Secretary of State for the Home Department and C-493/10 M. E., A. S. M., M. T., K. P., E. H. v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform (of 12 December 2011) – the CJEU determined that “it should be assumed that the treatment of asylum seekers in all Member States meets the requirements of the Charter, the Geneva Convention and the European Court.”⁴²

4.2.3. Constitutional Court of the Republic of Croatia – U-I-503/2018 (2020)

A request for constitutionality assessment was submitted regarding Article 54(1) of the International and Temporary Protection Act, citing a conflict with Article 22(2) of the Constitution, which states: “No one shall be deprived of their liberty nor shall their liberty be restricted except as provided by law and as decided by a court of law.” The position put forward was that any restriction on a foreign national's freedom of movement – including the accommodation of applicants for international protection – should be determined exclusively by a court, not an administrative authority such as the Ministry of the Interior. In its assessment, the Constitutional Court acknowledged that the legal order relevant to this case comprised Article 22 of the Constitution, Article 5 of the Convention and Articles 6 and 52 of the Charter.

⁴² *Ibid.*

The Constitutional Court recognised that EU Member States retain the authority to determine matters related to the entry independently, residence and expulsion of individuals seeking international protection. However, it emphasised that when imposing measures that restrict the movement of such applicants or foreign nationals in transfer, authorities must adhere not only to constitutional safeguards but also to relevant EU legal instruments. These instruments allow both administrative and judicial bodies to make decisions about movement restrictions. The Court further stressed that any limitation of liberty must be grounded in clearly defined and exhaustively listed legal grounds, thereby ensuring the right to liberty as protected by the Constitution, the Convention and the Charter. The Constitutional Court referred to the established case law of the Court of Justice, highlighting that the restriction of the fundamental right to freedom is permissible only if several strict preconditions are met. These preconditions are specifically designed to ensure that such measures remain limited in their application.⁴³

The Constitutional Court specifically referenced the provisions of the Charter as a foundation for its reasoning, emphasising that these provisions should be interpreted and applied in accordance with the aforementioned EU regulations and the established case law of the Court of Justice.⁴⁴

4.3. Shortcomings in exercising the Charter's fundamental rights in Croatia according to the FRA Report for 2024

With regard to threats to democratic values — particularly the protection of civic space, the strengthening of meaningful participation and the safeguarding of the rights to freedom of association, peaceful assembly and expression – the main challenges are evident in both national legal and political developments, as well as the prevailing discourse at the national level. These challenges continue to affect the practical exercise of the rights and freedoms guaranteed by the Charter.

A lack of transparent, accountable, democratic and pluralistic (processes for) participation in law and policymaking – including limited access to

⁴³ Judgement of the Court, 15 February 2016, *J. N. v Staatssecretaris van Veiligheid en Justitie*, C-601/15 PPU, EU:C:2016:84, p. 57.

⁴⁴ To find out more, visit: <https://www.iusinfo.hr/sudska-praksa/USRH2018B502A/>

information – remains a barrier to fully realising the right to public participation in Croatia. Civil society organisations often find their involvement in decision-making and consultations to be more symbolic than substantive, which undermines opportunities for meaningful engagement and diminishes the quality of public policy outcomes. Human rights advocates report that the selection process for including civil society organisations in working groups and advisory bodies tends to be non-transparent, with appointees chosen through the Council for Civil Society Development not always being the most qualified, reinforcing the perception that the government does not prioritise genuine civil society input. Many organisations express dissatisfaction with e-consultations, describing them as largely perfunctory exercises rather than authentic opportunities to gather informed public feedback and improve proposed policies. Authorities frequently struggle to respond promptly and substantive comments from experts or the public are often disregarded. The Information Commissioner has noted a concerning trend of consultation periods being shortened without explanation, with this practice becoming common especially at the local level. Alongside these shortened timelines, there are persistent issues with consultation reports not being published and public consultation plans either not being adopted or not made publicly available.⁴⁵

In 2020, the Constitutional Court independently initiated proceedings to assess whether articles 2 to 11 of the Election Constituencies Act complied with the Constitution, exercising its power under Article 38(2) of the Constitutional Act. During the constitutional court process in 2022, two additional proposals for such a review were received. At its session on 7 February 2023, the Constitutional Court determined that the current electoral system – comprising ten electoral units as set out in Articles 2–11 of the Act – significantly deviated from the principle of equal voting rights. This deviation was especially pronounced in terms of the substantial

⁴⁵ Đaković, T., Senta, C., Kasunić, S., Franet National contribution to the Fundamental Rights Report 2024, Centre for Peace Studies, Human Rights House Zagreb, 2024, available at:

https://fra.europa.eu/sites/default/files/fra_uploads/frr2024_croatia_en.pdf

aspect, which guarantees that each voter's ballot has equal weight and voting power. Consequently, the Court repealed the Election Constituencies Act, specifying that the repeal would take effect on 1 October 2023. Following this decision, the process of drafting a new Election Constituencies Act began. Although the new law underwent public consultation from 25 May to 24 June 2023, meeting the requirement in Article 11 of the Right to Access Information Act, the drafting process itself lacked transparency. No working group was formed, nor were there consultations with experts or opportunities for broader public discussion, which contradicts international electoral standards and best democratic practices. The public was not informed about who was involved in drafting the new law. It was only after the Information Commissioner's ruling, prompted by Gong's requests for access to information, that the Ministry of Justice and Public Administration disclosed the names of officials from its Directorate for the Political System and General Administration Sector. However, they did not explicitly state that these individuals were the authors of the new law. In October 2023, the proposed law entered the legislative process and opposition parties announced their intention to challenge its constitutionality, citing a lack of transparency and alignment with democratic standards during its drafting.⁴⁶

5. CHALLENGES IN IMPLEMENTING THE CHARTER OF FUNDAMENTAL RIGHTS IN ROMANIA

Romania has been working to implement the EU Charter of Fundamental Rights, having recognised its legally binding force since the Lisbon Treaty took effect on 1 December 2009. The Charter has been integrated into Romanian law and Member States are responsible for ensuring its effective application. Romania actively promotes and protects the fundamental rights outlined in the EU Strategy for strengthening Charter implementation and collaborates with both the European

⁴⁶ Ibid.

Commission and the EU Agency for Fundamental Rights to enhance its enforcement.

5.1. The Constitutional Court of Romania's interpretation of Charter Application

The Constitutional Court of Romania does not consider itself a positive lawmaker, nor does it regard itself as a tribunal with the competence to interpret and apply European law in disputes concerning citizens' fundamental rights.

The use of a European law regulation within the constitutionality control implies, on the grounds of article 148(2) and (4) of the Romanian Constitution, a cumulative conditionality. On one hand, this regulation must be sufficiently clear, precise and non-equivocal in itself or its meaning must have been established clearly, precisely and without doubt by the Court of Justice of the European Union. On the other hand, the regulation must relate to a certain level of constitutional relevance, such as its normative content to support the possible infringement by the national law of the Constitution, the single direct reference regulation within the constitutionality control.⁴⁷

In the practice of the Romanian judiciary, a question has emerged regarding the implications of when a Member State applies European law, observes the European standard but breaches the higher national standard. The problem is solved by article 53 of the Charter, which states that a higher national standard in the field of human rights will not be subjected to the priority of a lower European standard. In this sense ruled also the Constitutional Court of Romania, on several occasions. Within the constitutionality control, the referring to the provisions of the Charter of Fundamental Rights, act having the same legal force as the European Union constitutive Treaties, must be done in relation to the dispositions of article 148 of the Romanian Constitution, not to those comprised in article

⁴⁷ Popescu, M., Application of the Charter of Fundamental Rights of the European Union in Constitutionality Review, Romanian Journal of Public Affairs, 2017, available at: <https://rjpa.ro/index.php/rjpa/article/view/28/21>

20 of the fundamental law, which refers to international treaties. The Constitutional Court of Romania was notified by the Bucharest Tribunal, Section V Civil, regarding the unconstitutionality exception of article 1 point 1 and of Article 299 point 1 of the Civil Procedure Code, exception invoked by a party in a file pending before this court. The Constitutional Court allowed the unconstitutionality exception invoked in the file, indicating that, in what concerns the regulation of the challenge (contestation) possibilities against court decisions, the lawmaker has exclusive competence to institute, in particular situations, special procedural rules, as well as special manners of exercising the process rights, the significance of the free access to justice not being that of access, in all cases, to all court structures and to all manners of challenge. It was also indicated that the lawmaker is bound to observe the reference constitutional regulations and principles and the possible limitations brought to the conditions of exercising the challenge possibilities must not infringe on the right in its substance. In this matter, the Court established that, through the dispositions of article 1 point s1 and point 28 of Act No. 202/2010, any challenge possibility against the decisions given by judges on the base matter was eliminated for cases whose object is the obligation to pay an amount of money of up to 2000 lei inclusive, which is equivalent to the impossibility of a judicial control court to examine the matter in a higher jurisdiction rank. This limitation translates to a denial of judicial review at a higher level of jurisdiction, thereby curtailing the avenues for recourse in such matters. Thus, the Court establishes that the elimination of the judicial control over the decision given by the first court in matters and petitions regarding liabilities having as objects amount of money of up to 2000 lei inclusively, infringes on the constitutional principle regarding equality before the law, as regulated by article 16 of the Constitution.⁴⁸

In what concerns the invoking of article 47 – the right to an efficient challenge possibility and to a fair trial – comprised in the Charter of Fundamental Rights of the European Union, the Court establishes that the relating to these provisions comprised in a document having the same legal

⁴⁸ *Ibid.*

force as the European Union constitutive Treaties must be made to the dispositions of Article 148 of the Constitution and not to those included in article 20 of the fundamental law. With respect to this unconstitutionality criticism, the Court indicates that the provisions of the Charter of Fundamental Rights of the European Union are applicable in the constitutionality control to the extent to which they provide, guarantee and develop the constitutional provisions in the matter of fundamental right. Or, in the conditions in which the provisions of article 47 of the Charter refer, among other things, to the person's possibility to address a court of law, in examining a complaint grounded on the breaching of rights and liberties guaranteed by the Union law, the Court establishes that in the present matter the criticized legal texts do not contravene these European dispositions, analysed through the viewpoint of the dispositions of article 148 of the Constitution. In a different matter, the Constitutional Court was notified with the unconstitutionality exception of the dispositions of article 86(6) of Act No. 85/2006, in the sense that the criticised legal dispositions are unconstitutional because they remove, in case of the employer in insolvency, the employees' right to consultation and information when collective dismissals are performed, right generally recognised to the employees and regulated by article 69 of the Labour Code, instituting a derogation with respect to the prior notice term which must be respected in this situation. The Court proceeded to analyse and configure the invoked fundamental rights in line with the referenced European and international regulations, constitutionalising social protection measures in labour relations regulated under international treaties.⁴⁹

Pointing to the applicability of the Charter of Fundamental Rights of the European Union in constitutional reviews, the Court reiterated its established jurisprudence, emphasising that this document is, by its legal nature, distinct from other international treaties referenced in Article 20 of the Constitution. Specifically, it is separate from the constitutional text mentioned in Article 148 of the Constitution. In principle, the provisions of the Charter are applicable in constitutional reviews to the extent that

⁴⁹ *Ibid.*

they provide, guarantee, and enhance the constitutional provisions related to fundamental rights. In other words, their level of protection must be at least equivalent to that of the constitutional provisions concerning human rights.

5.2. A selection of cases against Romania at the Court of Justice concerning rights under the Charter

The implementation of the CJEU rulings is crucial and targeted advocacy should be planned and carried out to ensure that this is done quickly and properly. At the EU level, advocacy should be directed towards the European Commission, either through formal complaints or informal advocacy. The EC monitors the implementation of the CJEU rulings and has the power to fine Member States for refusing to comply with them. The EC can also withhold critical budgetary contributions from offending states.

CJEU, case C-673/16, Coman (2018): After the CJEU ruled in favour of the applicants – a same-sex couple seeking recognition of the third-country national husband’s right to free movement within the EU as a “spouse” of an EU citizen – in June 2018, and the National Constitutional Court acknowledged this ruling in September 2018, the competent district court dismissed the request to reopen the case due to the passage of time. To date, Romania has failed to implement the judgment. In response to this lack of compliance, several advocacy and litigation actions have been initiated by national and umbrella civil society organisations (CSOs) to urge the implementation of the CJEU judgment. These actions include: 1. In 2019, the Romanian CSO ACCEPT submitted a complaint to the European Commission, urging it to open an infringement procedure against Romania for its failure to comply with the CJEU judgment; 2. In 2022, the EU umbrella CSO ILGA-Europe and the Hungarian CSO Háttér Society filed a complaint to the European Commission, requesting an infringement procedure against Hungary for its non-compliance with EU law as interpreted by the CJEU judgment; 3. A same-sex couple, with assistance from the Romanian CSO ACCEPT, submitted an application to the European Court of Human Rights (ECtHR). This application was

supported by a joint third-party intervention from the EU umbrella CSO ILGA-Europe, the AIRE Centre and the International Commission of Jurists. Their arguments referenced the potential violation of Articles 53 of the European Convention on Human Rights (ECHR) and 52(3) of the Charter concerning the interpretation of the provisions of the Charter in accordance with the ECHR; 4. A similar joint third-party intervention was made by the EU umbrella CSO ILGA-Europe in collaboration with the AIRE Centre in another pending case before the ECHR on the same issue.⁵⁰

Given the sheer amount of cases one may come across, strategic litigation in the field of discrimination must always consider whether a case can lead to significant clarifications and adjustments of applicable law and positive changes that extend beyond the specifics of the individual case. In relation to Charter-based litigation, the CJEU Case C-81/12 *Asociația Accept* (2013) holds particular significance. This case originated from an action initiated before the competent national court by CSO *Accept*, a non-governmental organisation committed to promoting and safeguarding the rights of lesbian, gay, bisexual and transgender individuals in Romania. The action was prompted by an employer's public statement, which the CSO considered discriminatory based on sexual orientation in the context of recruitment. Regarding the legal standing of the CSO, the CJEU clarified that the enforceability of EU anti-discrimination law does not require an identifiable complainant who claims to have been the victim of such discrimination. Consequently, when permitted by national law, associations with a legitimate interest have the right to bring legal or administrative proceedings to enforce obligations stemming from EU anti-discrimination law, even if they are not acting on behalf of a specific complainant or in the absence of an identifiable individual.⁵¹

⁵⁰ Relying on the EU Charter of Fundamental Rights for Human Rights Litigation, Civil Liberties Union for Europe, 2023, available at: https://dq4n3btxmr8c9.cloudfront.net/files/swj7jv/Charter_Handbook_may2023_v4.pdf

⁵¹ *Ibid.*

5.3. Application of the Charter by the Romanian national courts

Since 1 December 2009, the EU Charter has been referenced in approximately 100 cases. However, in none of these instances was the EU Charter cited as the primary argument for modifying or overturning the court decisions under review in the appeals. Instead, it was used as a subsidiary argument – essentially a supplementary point intended to reinforce the validity of the central arguments. There are no statistics available regarding the cases resolved by the Administrative Tribunals and the Courts of Appeal in Romania in which the EU Charter has been invoked as such data is not published.⁵²

The following provisions of the EU Charter have been invoked in most of those cases: Article 15 (Freedom to choose an occupation and right to engage in work), Article 17 (Right to property), Article 20 (Equality before the law), Article 21 (Non-discrimination), Article 41 (Right to good administration), Article 47 (Right to an effective remedy and to a fair trial), Article 48 (Presumption of innocence and right of defence) and Article 50 (Right not to be tried or punished twice in criminal proceedings for the same criminal offence).

Most of the cases invoking the provisions of the EU Charter were appeals seeking a review of decisions made by the High Court of Cassation and Justice of Romania, specifically when it was acting in its capacity as a court of recourse.

The primary legal foundation for the request for review stemmed from the provisions of Romanian Act No. 554/2004 on administrative disputes (Act No. 554), which mandated that national judges uphold the principle of the primacy of EU law. However, this provision is currently invalid, having been repealed by Act No. 299/2011, enacted in 2011. The specific areas of law in which the Charter was invoked include the following: fiscal disputes

⁵² Vartires, D., I., Georgescu, B., *The Charter of Fundamental Rights of the European Union in Romanian national judiciary*, Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, 2018, available at: <https://www.aca-europe.eu/colloquia/2012/Romania.pdf>

(non-discrimination and right to good administration); administrative regulations regarding social security and pension rights (property right and non-discrimination); special regulation regarding the magistrate's profession (non-discrimination); the right of foreigners (right to good administration and the principle of a fair trial and reasonable delay); compensation granted by administrative national authorities in the context of property restitutions (right to good administration and the principle of a fair trial and reasonable delay). To date, there have been no requests from the High Court of Cassation of Romania to the Court of Justice for a preliminary ruling regarding the interpretation of the Charter. This is due to the fact that the parties involved in the dispute have not sought a preliminary ruling, nor has the High Court made such a request to the European Court of Justice, *ex officio*.⁵³

In general, Romanian national law does not draw a clear line between rights and principles, nor does it make distinctions regarding Article 52(2) of the EU Charter. Theoretically, it is difficult to separate rights from principles, as principles are seen as foundational rules that underpin legal provisions and shape the entire legal system. According to Romanian legal doctrine, principles are fundamental rules established in the Constitution, laws enacted by Parliament or administrative acts issued by the executive body (the Government or other administrative authorities). Their legal force derives from the authority of the documents in which they are enshrined. For instance, constitutional principles such as the separation of powers, balance of powers, the rule of law, and equality and non-discrimination are not only enshrined in the Constitution but are also addressed in various national legislations. At the same time, any principle outlined in the Constitution can also be regarded as a “right”. As a result, distinguishing between these two theoretical concepts is often challenging.⁵⁴

Romanian administrative courts conduct a comprehensive review of administrative acts, assessing adherence to legal principles both when

⁵³ *Ibid.*

⁵⁴ *Ibid.*

determining the legality of normative legal acts and when examining individual administrative decisions claimed to infringe upon a person's rights. Principles may be invoked with the same legal authority as rights. When analysing the legality of an administrative act, be it regulatory or otherwise, the courts will take into account national legal provisions as well as the provisions of the Charter. However, it is fair to assume that the application of the provisions of the Charter relating to the principles will generate various disputes. At first glance, Article 52(5) of the EU Charter might appear to preclude judicial review in the field of European social and economic policy, particularly where such matters are defined as principles rather than rights. However, the distinction between these two categories is often blurred, which can create uncertainty. For instance, equality before the law is classified as a right in the Charter (Article 20), yet in the Romanian Constitution, it is referred to as a principle despite both having the same binding effect. Nevertheless, it is reasonable to expect that courts will interpret these provisions broadly, rather than strictly separating rights from principles when determining their respective legal regimes.⁵⁵

6. CHALLENGES IN IMPLEMENTING THE CHARTER OF FUNDAMENTAL RIGHTS IN BULGARIA

The Constitution of the Republic of Bulgaria makes no explicit reference to the EU Charter of Fundamental Rights, the European Convention of Human Rights or EU law. However, Article 5(4) of the Constitution stipulates that any international treaty that has been ratified according to a procedure established by the Constitution shall be part of the domestic law. Such treaties take precedence over any conflicting domestic legislation.⁵⁶

⁵⁵ *Ibid.*

⁵⁶ The EU Charter of Fundamental Rights in Bulgaria, European Union Agency for Fundamental Rights, 2019, available at: <https://op.europa.eu/en/publication-detail/-/publication/4f6c468e-4adb-11e9-a8ed-01aa75ed71a1/language-en>

While all EU Member States apply the EU Charter, they do not always do so to its full potential. The Charter is sometimes cited in the context of forthcoming legislation or parliamentary debates. Additionally, national authorities and courts occasionally reference the Charter in their decisions and rulings. Examples from Bulgaria include:

Freedom to choose an occupation and right to engage in work (Article 15) is used by courts, a national human rights body and the Parliament: The Bulgarian Constitutional Court invoked the Charter's provision on the freedom to choose an occupation in a 2011 case, asserting that disproportionate restrictions on the right to exercise a profession are unacceptable. This ruling was later referenced during a National Assembly debate regarding the employment status of former collaborators with state security services. In 2014, the Bulgarian Commission for Protection against Discrimination cited Article 15 in a case involving a former police officer who alleged age discrimination. The Commission determined that employees of the Ministry of the Interior in a specific age group (over 41 years old) were disproportionately impacted and classified the order terminating the complainant's contract as an act of indirect discrimination based on age.⁵⁷

National courts: human dignity (Article 1), rights of the child (Article 24) and integration of persons with disabilities (Article 26): In 2017, the Supreme Administrative Court (Case 10383/2015) was the court of last instance in a litigation involving a teacher who had refused to allow a student with a disability to go on a school excursion, which constituted an alleged violation of the Protection against Discrimination Act. The Supreme Administrative Court upheld the decision of the lower court and

⁵⁷ The state of the rule of law in Europe, Reports from National Human Rights Institutions – Bulgaria, European Network of National Human Rights Institutions, 2023, available at: https://ennhri.org/wp-content/uploads/2023/08/EEA-NG_Bulgaria_Country-Report_Rule-of-Law-2023.pdf#:~:text=The%20national%20regulatory%20framework%20applicable%20to%20the,institution%20has%20not%20changed%20since%20January%202022.&text=Bring%20the%20national%20legislation%20and%20practice%20into,of%20both%20the%20judicial%20and%20legislative%20authorities.

dismissed the teacher's appeal. To strengthen its argument, the court referenced various rights outlined in the Charter, including Article 1 (Dignity), Article 24 (The rights of the child) and Article 26 (Integration of persons with disabilities).

National courts: field of application (Article 51): In a decision of 1 June 2016 (Case 8412/2015), the Supreme Administrative Court declared, “The determination and proclamation of an individual’s affiliations with state security bodies and the intelligence services of the Bulgarian National Army do not fall within the scope of powers granted to the Union as outlined by the TFEU. In this context, the Bulgarian state and its courts should refrain from applying the provisions of the Charter, as EU law does not pertain to these societal relations.”⁵⁸

In Bulgaria, some Charter rights appear not to be fully mirrored in national constitutional law, for example: the protection of personal data (Article 8), workers’ right to information and consultation within the undertaking (Article 27), right of access to placement services (Article 29), protection in the event of unjustified dismissal (Article 30), right to access of documents (Article 42) and the right not to be tried or punished twice for the same criminal offence (Article 50). The absence of specific rights in a constitutional text does not imply that they are unprotected by the legal order. However, explicit guarantees within a constitutional document render these rights more visible and accessible. In this regard, the Charter can help to strengthen lesser-known rights.

6.1. Ombudsman’s role in the application of the Charter in Bulgaria

It would be worthwhile to discuss the role of the Ombudsman in applying the Charter and exercising fundamental rights in the Republic of Bulgaria, especially in relation to the courts, legislative amendments and the actions of state institutions outside the judicial system, in comparison to other EU Reference Member States.

⁵⁸ *Ibid.*

6.1.1. Opinions on interpretative decisions of the Supreme Administrative Court

The Ombudsman of the Republic of Bulgaria was asked for an opinion on the interpretation of Case 4/2022. More specifically, the Ombudsman was asked the following question: “Do non-profit legal entities registered in the Register of Non-profit Legal Entities as organisations of and for people with disabilities, as defined in paragraph 1 item 12 of the Supplementary Provisions of the Persons with Disabilities Act, structured as foundations for private benefit, have legal interest in challenging bylaws that affect individuals with disabilities who are not members of those organisations and with whom they do not have social services ‘advocacy’ agreements?”. The letter indicates that contradictory judicial practices have emerged among administrative courts, including a ruling from the Supreme Administrative Court regarding legal standing and the admissibility of the Greenberg Foundation in Plovdiv challenging bylaws issued by municipal councils that pertain to individuals with disabilities. According to the information provided, the Greenberg Foundation in the city of Plovdiv was established to carry out activities as an organisation of and for people with disabilities in the sense of paragraph 1 item 12 of the Additional Provisions of the Law on People with Disabilities. The Organisation’s statutes outline its primary objectives: to provide legal assistance to individuals with disabilities and to advocate for their rights. To achieve these goals, the Foundation employs several strategies, including monitoring current legislation related to people with disabilities and advocating for their rights before various stakeholders, including administrative bodies and services. This advocacy encompasses challenging illegal bylaws or individual provisions enacted by municipal councils or executive authorities that affect individuals with disabilities. Additionally, the Foundation is involved in forming and conducting court cases to defend the legally recognised rights of disabled individuals. The Ombudsman highlights the vulnerability of people with disabilities in Bulgaria, noting that they often face significant challenges in leading active and independent lives and many struggle to seek the legal protections they require in a fair and accessible manner. A significant proportion of individuals – according to

official Eurostat data published in 2021, more than 50.7% of those aged 16 and older – are at risk of social exclusion and poverty. Nearly 7,000 individuals have been placed under full or limited interdiction and, under the 1949 Individuals and Families Act, cannot independently exercise their rights due to limitations in their legal capacity. The number of people with disabilities living in small settlements, without relatives or friends and lacking adequate access to information about protecting their interests, is also substantial. Additionally, there is a significant percentage of individuals with reduced mobility who, due to unresolved issues regarding suitable architectural environments, including some court buildings for which the Ombudsman has repeatedly made recommendations, often cannot attend court cases and advocate for their rights. The Ombudsman emphasises Bulgaria's commitments under several international human rights agreements, including the UN Convention on the Rights of Persons with Disabilities, the Charter, the Convention, etc. Following a discussion on this issue and the opinions received regarding Interpretive Decision No. 2/25.07.2023 and in accordance with Interpretation No. 4/2022 of the Supreme Administrative Court, it has been determined that non-profit legal entities registered in the Register of Non-profit Legal Entities as organisations of and for people with disabilities, as defined in paragraph 1 item 12 of the Additional Provisions of the Law for People with Disabilities, in the legal and organisational form of a foundation for private benefit, do not possess a legal interest in contesting bylaws that affect individuals with disabilities who are not their members and with whom they do not have a contract for social advocacy services.⁵⁹

6.1.2. Opinions on draft laws

The Ombudsman has submitted an opinion to the Ministry of Health concerning the lack of public information about the development of the process and the proposals approved for inclusion in the draft Decree of the

⁵⁹ Best practices of EU Charter of Fundamental Rights use in Bulgaria, Iceland, Liechtenstein, Norway Grants, 2024, available at: https://www.ombudsman.bg/storage/pub/files/20240405150617_Best%20Practices%20of%20EU%20Charter%20of%20Fundamental%20Rights%20Implementation%20in%20Bulgaria%20-%20FEB%202024%20-%20EN%20translation.pdf

Council of Ministers, which seeks to amend and supplement the Ordinance on Medical Expertise. This ordinance was published for public discussion on 11 November 2022. In the opinion, the Ombudsman emphasises that the draft proposal aligns closely with the recommendations made by the Ombudsman and meets the expectations of people with disabilities. This is undoubtedly a positive step toward guaranteeing the rights of citizens in their medical examinations, reflecting the constructive dialogue between the Ministry of Health and organisations representing individuals with disabilities. The opinion highlights the need for timely adoption of the proposed texts while thoroughly considering the opinions and suggestions received during public consultations. As the public defender, the Ombudsman stresses the importance of ensuring publicity and transparency in the decision-making process. This aligns with the right of citizens with disabilities to actively participate, as guaranteed by the UN Convention on the Rights of Persons with Disabilities and to a good administration under the Charter. This recommendation led to the adoption of a Draft Regulation.⁶⁰

7. APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS IN SERBIA – COMPLIANCE, CHALLENGES AND RECOMMENDATIONS

In the context of the implementation of the Charter in the Republic of Serbia, the previous analysis reveals a significant disparity between the country's declared legal order and its actual enforcement of human rights and the rule of law. While the Constitution of the Republic of Serbia and ratified international treaties guarantee a broad spectrum of rights, real-world practices frequently fall short. Key challenges include political influence over the judiciary and media, systemic impunity for human rights violations, inefficiencies within the judicial system and inadequate protection of vulnerable groups. The political will to carry out comprehensive reforms is often hindered by the need for geopolitical

⁶⁰ *Ibid.*

balancing and internal control over the narrative, which poses the greatest obstacle to progress.

7.1. Compliance of Serbia's constitutional and legal order with the Charter

The Constitution of the Republic of Serbia lays a strong foundation for the protection of human rights. It proclaims the rule of law as a fundamental premise, based on inalienable human rights and ensures their direct application. The Constitution explicitly states that human and minority rights guaranteed by the Constitution are directly applicable, as are those guaranteed by generally accepted rules of international law and ratified international treaties.

Serbia has ratified key international human rights instruments, including the European Convention on Human Rights and a few of its protocols, The Revised European Social Charter and UN human rights treaties. Theoretically, this commitment to international standards aligns its legal order with many of the principles enshrined in the Charter.

The Serbian Constitution guarantees a wide range of rights similar to those recognised by the Charter, such as dignity, the right to the integrity of the person, life, liberty and security, prohibition of torture and slavery, the right to an effective remedy and to a fair trial, non-discrimination, freedom of expression, freedom of assembly and of association, the right to work, social security and assistance, the rights of the child and the rights specific to national minorities. The aim of the 2022 constitutional amendments was to strengthen the independence of the judiciary further.

Although the Serbian Constitution and ratified international treaties provide a strong *de jure* framework for the protection of human rights, reports consistently highlight significant shortcomings in their effective implementation. For example, in its Serbia 2023 Report, the European Commission finds that “Serbia’s legislative and institutional framework for upholding fundamental rights is broadly in place” but immediately follows with observations on delays in the implementation of action plans and the lack of resources for independent bodies. This suggests that the

legal order, while seemingly comprehensive on paper, often fails to translate into tangible improvements in practice due to lacking implementation, resources or political will. The focus of reforms must therefore shift from simply adopting new laws or harmonising existing ones to ensuring their consistent and effective implementation. This requires addressing underlying institutional weaknesses, resource deficits and the political environment.

Serbia is bound by its Constitution, the Convention (as a member of the Council of Europe), and is progressively aligning itself with the Charter. Article 53 of the Charter explicitly states that the Charter does not restrict existing protections. This multi-layered protection system, while useful, also poses a challenge in ensuring coherent and consistent application, especially when interpretations or standards may differ. Serbian courts and legal professionals must navigate this complex hierarchy to ensure that the highest standard of protection is always applied, drawing on the jurisprudence of the Constitutional Court, the European Court of Human Rights (ECtHR) and, increasingly, the Court of Justice. Therefore, extensive training of judges, prosecutors and lawyers in comparative human rights law and the interaction of national jurisprudence and those of the Convention and the Charter is essential for full use of these overlapping protections and preventing the violations of rights due to inconsistent application.

Table 1: Comparative overview of key rights from the Charter and the Serbian Constitution

The Table below provides a clear and concise visual representation of the *de jure* alignment between the EU Charter of Fundamental Rights and the Constitution of the Republic of Serbia. It is as a basis for assessing the implementation gap discussed in this analysis.

EU Charter of Fundamental Rights (examples)	Constitution of the Republic of Serbia (relevant Articles)	Notes on compliance and differences
Article 1: Dignity	Article 23: Human dignity is inviolable.	Fully compliant. Fundamental principle.
Article 4: Prohibition of torture and inhuman or degrading treatment or punishment	Article 25: Physical and mental integrity is inviolable. Torture, inhuman or degrading treatment or punishment are prohibited.	Fully compliant.
Article 20: Equality before the law	Article 21: All are equal before the Constitution and law.	Fully compliant.
Article 21: Non-discrimination	Article 21: Discrimination on any grounds is prohibited.	Substantially compliant. In the Charter, sexual orientation, disability and age are mentioned explicitly. Serbia has a general clause and a special Anti-discrimination Act.
Article 24: The rights of the child	Article 64: Children shall enjoy human rights suitable to their age and mental maturity.	Substantially compliant. The Charter provides broader guidelines for protection.
Article 47: Right to an effective remedy and to a fair trial	Article 32: Right to fair trial. Article 36: Right to legal remedy.	Fully compliant in principle. Implementation and efficiency are challenges.

Article 11: Freedom of expression and information	Article 46: Freedom of thought and expression. Article 50 – Freedom of the media.	Substantially compliant in theory. In practice, there are significant challenges in application.
Article 17: Right to property	Article 58: Peaceful tenure of property is guaranteed.	Fully compliant.
Article 35: Health care	Article 68: Right to health care.	Substantially compliant. The Charter emphasises access to health care.
Article 37: Environmental protection	Article 74: Right to healthy environment.	Substantially compliant. The charter is more explicit when it comes to obligations.

7.2. Current state of practice through the prism of Charter implementation in Serbia

Observing the Charter through the implementation practice, a significant gap is evident between *de jure* compliance and *de facto* implementation of the Charter of Fundamental Rights in the Republic of Serbia.

7.2.1. Judicial system and independence:

Despite constitutional amendments in 2022 aimed at strengthening the independence of the judiciary, political influence on the judiciary and prosecution remain a serious concern. Reports indicate “serious problems concerning the independence of the judiciary” and that “political influence on judicial appointments compromises the independence of the judiciary, leading to external pressure on judges regarding their judgments”. Although the High Judicial Council (HJC) and the High Prosecutorial Council (HPC) have been established, two key implementing laws (the Judicial Academy Act and the Seats and Territories of Courts Act) are still

awaiting adoption. Judicial inefficiency, nepotism and corruption remain problems. The backlog of court cases in Serbia is significant, particularly among those that have been pending for over three years, with approximately 600,000 cases awaiting resolution in the executive departments alone. The average number of cases resolved per judge has decreased and many courts are processing fewer cases than is reasonably expected. Additionally, there is a lack of transparency in the publication of case law in Serbia.

7.2.2. Fight against corruption and organised crime:

Serbia has reached a “certain level of readiness” but has demonstrated “limited overall progress” in its fight against corruption. Corruption remains “widespread and a cause for concern”. There is no national anti-corruption strategy or action plan and the current draft needs to incorporate the remaining interim criteria from Chapter 23 and GRECO recommendations. While there has been a slight increase in new investigations and final convictions in high-profile corruption cases, the number of new indictments has dropped and there have been no cases of final confiscation of assets. All this points to a significant gap in effective enforcement. Many observers believe that numerous corruption cases remain unreported and unpunished.

7.2.3. Freedom of expression and freedom of the media:

Regarding freedom of expression, “limited progress” has been made but the situation for press and media freedom in Serbia is described as being “in a state of emergency”. Journalists in Serbia face physical attacks, death threats, and dangerous accusations from high-level politicians. They are targeted with various spyware tools and harassed through orchestrated smear campaigns. These attacks occur within a “climate of impunity” for the perpetrators. Additionally, the increasing number of Strategic Lawsuits against Public Participation (SLAPPs), particularly those initiated by national and local authorities, creates an “intimidatory effect” that leads to self-censorship. Political and economic influence on the media remains a significant issue, with the media landscape dominated by ruling parties and

pro-government outlets. Many media organisations propagate anti-EU narratives.

7.2.4. Protection of vulnerable groups and anti-discrimination:

Despite the existence of a legal order, “continued discrimination, particularly against vulnerable groups such as Roma, persons with disabilities and LGBT people” continues to be pervasive. Prejudice against LGBTI people, Roma and refugee/migrant populations remains widespread, often manifesting through online hate speech. There is no law that allows for legal gender recognition based on self-determination; instead, transgender individuals are required to undergo a mandatory one-year hormone treatment as a condition for legal recognition. Violence against women remains alarmingly prevalent, evidenced by a high number of reported cases and concerns regarding delays in funding for support services. Furthermore, the protection of children under 15 from child labour is “not guaranteed in practice,” with an estimated 9.5% of children aged 5-17 involved in such labour. Additionally, refugees and migrants are vulnerable to abuse and violence at borders.

7.2.5. Access to justice and procedural efficiency:

There are concerns about police abuse during arrest or remand detention, with reports of impunity and prosecutors failing to order forensic medical examinations of the victims of abuse. The procedure for implementing decisions of the European Court of Human Rights requires further regulation. War crimes trials remain slow, with over 1,700 cases pending investigation and trials frequently delayed. There are also concerns about the glorification of war criminals by officials. Prison conditions, while generally adequate, continue to be marked by reports of physical abuse by staff and impunity.

7.2.6. Independent institutions:

The Ombudsman and the Commissioner for Information of Public Importance and Personal Data Protection need additional resources and staff, but there are significant delays in recruitment. There is an

“unfavourable working environment” for non-governmental organisations (NGOs) and human rights defenders, marked by smear campaigns, alleged use of spyware and leaks of personal data.

The recurring theme of “impunity for the perpetrators” in a variety of human rights violations – attacks on journalists, police abuses and high-level corruption – points to a systemic failure of the justice system. When perpetrators of abuses are not held accountable, it not only denies justice to victims, but also encourages further violations, undermines public trust in the rule of law and undermines the very purpose of legal order. This suggests that the problem is not in the absence of laws but in the absence of political will and institutional capacity to enforce them impartially, especially against powerful actors. Addressing impunity requires a fundamental change in political culture and strengthened investigative bodies, independent prosecutorial decisions and judicial impartiality, ensuring that no one is above the law.

The combined pressures on independent media (SLAPPs, smear campaigns, political/economic influence) and civil society organisations (hostile environment, alleged spyware) create a pervasive “intimidatory effect”. This goes beyond individual rights violations; it actively narrows the democratic space for public discourse, critical oversight and citizen participation. When journalists and activists are silenced, the public’s right to information is limited and accountability mechanisms are weakened, leading to a society that is less transparent and less democratic. Protecting and expanding the space for independent media and civil society is therefore essential. This requires not only legal guarantees but also active political protection and public condemnation of attacks as well as strong mechanisms for legal protection and support for those targeted.

7.3. Recommendations for harmonising the legislation and practice with the Charter

To address existing shortcomings and fully implement the standards of the EU Charter of Fundamental Rights, targeted amendments to laws, bylaws

and court procedures are needed, along with institutional and educational measures. The following are key recommendations:

- ***Strengthen independent human rights institutions:*** Human rights institutions need to be further strengthened by increasing their financial and human resources, enabling them to fully exercise their mandate. The conditions for their election and dismissal should be tightened in line with best European practices; for example, introducing a qualified majority for the election of the Ombudsman in Parliament should be considered, as recommended by the Venice Commission, to ensure the political neutrality of the role. Independent bodies must have mechanisms to monitor the implementation of their recommendations while the Government and Parliament should formally consider their annual reports and respond to the recommendations. This necessitates avoiding a repeat of situations where authorities ignore the Court's orders (as seen in the extradition of the Bahraini activist despite a court ban). Instead, procedures should be established to guarantee the swift implementation of international human rights obligations.
- ***Improve the anti-discrimination framework and practice:*** Adopt and implement national action plans to combat discrimination and protect vulnerable groups. The European Commission has stressed the urgency of adopting plans (strategies) particularly in the areas of combating violence against women, inclusion of Roma and other national minorities, protection of the rights of LGBTIQ persons and protection of children from violence, while ensuring the budget for their implementation. These strategic documents must not remain a dead letter – the government should establish a clear reporting mechanism for their implementation and measures of success. It is also recommended to amend criminal and other relevant laws to sanction hate crimes and hate speech more effectively. Judicial practice and prosecutors should demonstrate zero tolerance for acts motivated by intolerance. Specifically, it is essential to introduce or enforce existing provisions on aggravating circumstances for hate crimes, provide training for

police and prosecutors on recognising and prosecuting such cases and maintain records and statistics on the handling of hate crimes. The Commissioner for Equality should persist with initiatives to amend laws where systemic shortcomings are observed, such as refining the definitions of discrimination or expanding the range of prohibited grounds, in line with the evolution of EU law.

- ***Adopt a law on same-sex partnerships:*** In the spirit of the EU Charter’s principle of equality and the practices of most Member States, Serbia should legally regulate same-sex partnerships. The Council of Europe has already provided guidance for such legislation through an expert opinion, highlighting that the adoption of a framework for same-sex couples would significantly bring Serbia closer to meeting European equality standards. Therefore, it is recommended that the Government resubmit the draft law on civil partnerships to Assembly, following prior dialogue with stakeholders and conducting an awareness-raising campaign to ensure social support. Simultaneously, political blockages must be addressed – the argument that “this law will not pass while the current president is in office” is inconsistent with Serbia’s obligations as an EU candidate country, as it is expected to uphold the European values of non-discrimination. While the EU does not impose a direct obligation to legalise same-sex marriages, the principles of non-discrimination based on sexual orientation and the right to found a family necessitate a reasonable legal solution for same-sex couples.
- ***Amend the freedom of expression and media provisions:*** The recently adopted media legislation must be further amended to align fully with the EU *acquis*. This includes strengthening the independence of the Regulatory Authority for Electronic Media (REM) – new REM council members must be elected transparently and without political tutelage and REM should rigorously enforce its authority against broadcasters that violate standards of impartiality and engage in hate speech. The European Commission recommends amending media legislation wherever it

deviates from the latest EU standards. In addition to normative changes, institutional practices in the media sector need improvement. Prosecutors' offices and courts should prosecute attacks on journalists promptly and effectively. To ensure expertise and expedite proceedings, specialised units within police and prosecutor's offices should be established to handle attacks on journalists and activists. Authorities must also convey a clear stance against impunity: any threat to or physical attack on a journalist must be publicly condemned by the highest officials, thoroughly investigated and appropriately sanctioned. Furthermore, high-ranking officials and MPs must refrain from belittling and verbally attacking the media and journalists because such behaviour creates a climate of lynching and discourages the media from reporting critically. Additionally, transparent co-financing of the media content of public interest should be introduced at all levels of government to encourage quality journalism without political influence. It is also essential to ensure full transparency regarding media ownership and advertising, in line with EU standards, so that citizens who is behind the information they receive.

- ***Reform police powers and procedures:*** To ensure better protection of its citizens' rights, Serbia needs to amend the law on internal affairs to ensure the institutional independence of the police from political influence. The European Commission explicitly recommends that the police be made fully autonomous from the Ministry of the Interior and fully accountable only to the Prosecutor's Office during pre-investigation and investigation phases. This would prevent potential political influence on investigations and ensure the application of the rule of law principles in criminal investigations. Police procedures should be aligned with the standards in the field of prevention of torture and ill-treatment including accurate audio and video recordings of police interviews, strict respect for detainees' the right of access to a lawyer without undue delay and full implementation of the

standards of the European Committee for the Prevention of Torture (CPT). Serbia needs to revise the Criminal Code amendments of 2019 that introduced life imprisonment without the possibility of conditional release for a number of crimes as they are contrary to the European standards for rehabilitating life-sentenced prisoners. The legislator should provide for a mechanism for a periodic review of life sentences to align it with the practice of the European Court of Human Rights. All these changes would contribute to Serbia's implementation of the principles of human dignity and humane penal policy set out in Article 4 of the Charter (Prohibition of torture and inhuman or degrading treatment or punishment).

- ***Reform judicial procedures and strengthen the case law in accordance with the Charter:*** Serbia should continue the reform of civil and criminal procedures to speed up judicial processes and introduce stricter deadlines and performance criteria for judges, while respecting their independence. Wider application of alternative dispute resolution methods (mediation, conciliation) should be considered to relieve the burden on courts and provide citizens with faster protection of their rights. The Constitutional Court should make a more proactive use of its power of abstract supervision, e.g. assess the constitutionality of laws that raise concerns regarding fundamental rights on its own initiative or at the proposal of the Ombudsman. It would also be useful to establish a permanent consultative dialogue between the Constitutional Court, the Supreme Court of Cassation and the European Court of Human Rights (e.g. through the exchange of case law) to ensure a uniform interpretation of standards. Serbian judges and prosecutors must receive systematic training on the EU Charter and the relevant case law of the Court of Justice, as they will need this knowledge when Serbia joins the EU. Already, when applying EU law through specific agreements like the Stabilisation and Association Agreement, courts can use the standards set out in the Charter of Fundamental Rights of the European Union as a

reference or guide for interpreting fundamental rights. The Judicial Academy has started to train judges in these matters and this should be continued and expanded.

- ***Amendments to other relevant regulations:*** Serbia should ensure that all laws affecting the exercise of fundamental rights are aligned with EU standards. For example, the Access to Information of Public Importance Act has recently been amended and it is now crucial to strictly implement the provisions that impose an obligation of transparency and accountability on public institutions towards citizens, in accordance with Article 41 of the Charter (right to good administrative procedure and access to documents). Furthermore, the Personal Data Protection Act (which is already aligned with EU GDPR standards) should provide effective protection of citizens' privacy. This requires strengthening the capacities of the Information Commissioner and strict control by the competent authorities over data processing. In addition, Serbia should adopt a special law or policy to protect whistle-blowers in accordance with the EU directive, recognising their critical role in safeguarding the public interest and upholding the rule of law. Regarding environmental rights (as part of the so-called "third generation" rights), it is essential to empower citizens and associations to effectively participate in decisions that impact their environment and health. This approach aligns with the Charter's principles that call for a high level of environmental protection.
- ***Education and culture:*** In addition to the normative changes, educating all stakeholders is crucial for real approximation to the Charter's standards. Serbia should introduce or strengthen continuous education for judges, prosecutors, police officers and civil servants through programmes on European human rights standards. The Judicial Academy already organises specialised courses on the EU Charter in the context of the Serbian legal system, which should become regular and more comprehensive. Introducing courses on EU law and the Charter in basic law studies

and in the training of lawyers would be useful, as the entire legal profession would be prepared to apply these standards. The public should be informed about their rights – public information campaigns and the teaching fundamental rights in schools can help raise awareness. Informed citizens are more likely to demand their rights and will be less likely to put up with the violations of their rights, indirectly strengthening the implementation of the law.

- ***Participation of civil society in reforms:*** The government and the parliament should systematically consult civil society organisations when drafting legislation that concerns human rights and fundamental freedoms. These organisations often have expert knowledge and direct insight into problems on the ground and can help make new laws more effective. The European Union insists on meaningful involvement of civil society in the design and monitoring of reforms in the field of human rights, as part of the accession process. Representatives of relevant associations should be included in the working groups for Chapter 23 as well as in the bodies that monitor the implementation of action plans. This will ensure transparency and better control over the implementation of obligations, as well as enhance public trust in the reform process.

These recommendations cover specific legal amendments (substantive law and procedural law), strengthening institutions and changing practices, as well as broader activities to change culture and awareness. Essentially, Serbia should move from formal harmonisation to substantive respect for the law. The Charter requires not only the adoption of regulations, but also that institutions act on a daily basis in accordance with its principles of dignity, freedom, equality, solidarity, the rule of law and civil rights. Establishing such an environment requires investment and perseverance. In the following chapter, we discuss the key challenges that stand in the way of implementing these recommendations and the goals that need to be achieved.

7.4. Key challenges and goals of Serbia's alignment with the Charter standards

Reforms do not exist in a vacuum; their implementation depends on a broader legal, political and social context. We have identified the key challenges that either slow down or hinder Serbia's full alignment with the EU Charter of Fundamental Rights, as well as the goals that need to be achieved to overcome these challenges.

1. Constitutional limitations and legal order: Despite being abundant in guarantees of rights, the Constitution of the Republic of Serbia may present several obstacles to full harmonisation with European Union standards. For example, it does not contain an explicit provision allowing for the transfer of sovereign powers to the EU nor does it clearly recognise the primacy of EU law. As early as 2007, the Venice Commission recommended the inclusion of such a clause, citing its importance for future EU membership and its presence in the constitutions of other regional countries. Without this constitutional foundation, the application of the EU Charter and the broader body of EU law within Serbia's national legal order could be called into question upon accession. This challenge is yet to be resolved and will likely require new constitutional amendments, probably just before Serbia joins the Union. Furthermore, certain constitutional provisions – such as the definition of marriage as exclusively a heterosexual partnership – impose restrictions on the adoption of regulations (for example, to introduce same-sex partnership would require changing the Constitution). Then, the preamble to the Constitution defining Kosovo as an integral part of Serbia is a politically sensitive issue. The normalisation of relations with Kosovo is a separate process, but its unsuccessful resolution may indirectly block integration and, consequently, progress in the field of law. Goal: In the medium term, Serbia needs to plan constitutional amendments to fully align with the European *acquis*. This includes incorporating a clause on the direct application of EU law, as well as considering other necessary amendments (e.g. defining the limitations of rights in line with European standards more precisely, including explicitly guaranteeing the constitutional right to

access to court and legal aid, which is currently not the case). Any such significant constitutional alteration will necessitate a broad political consensus and a referendum – both of them challenges given Serbia's polarised political landscape.

2. Political will and credibility of reforms: One of the key challenges is the lack of stable political will to prioritise human rights. Although authorities formally declare their commitment to the European path, practice often reveals a tendency to postpone substantive changes or adopt laws without full implementation. The progress presented by Serbia in the accession process frequently amounts to mere technical steps, while substantive and structural reforms stagnate. Over the past decade, there has even been a decline in the quality of democracy: institutions have weakened and notable crises, such as the opposition's boycott of the 2019-2020 elections have occurred. This erosion of democracy also adversely affects human rights as the government often prioritises maintaining power and control over strengthening the rule of law. Furthermore, it is evident that some reforms are only implemented when they are externally mandated, leading to a so-called "tick-the-box" approach. For instance, constitutional changes in the judiciary happened under pressure from the EU, yet implementation remains obstructed (delays in adopting accompanying laws, the persistence of informal political influence). The political culture is rife with rhetoric that discourages criticism; independent media, NGOs and protest groups are often labelled as foreign mercenaries or enemies of the state. This environment is at odds with the spirit of the Charter. Goal: To enhance political dialogue and achieve a consensus between the government and the opposition that the rule of law and fundamental rights are non-partisan issues of vital importance to society. This requires ruling structures to stop viewing the EU's reform demands as mere formalities and instead recognise them as essential for the well-being of citizens. The European Union and its Member States must also clarify that the opening of further negotiation clusters and the provision of financial support depend on tangible progress in human rights. A sincere and increased political will would accelerate all other steps – without it, even the best laws remain unenforced.

3. Institutional capacity and enforcement: Despite good intentions, Serbian institutions face significant limitations in their financial, administrative and professional capacities to implement complex reforms. A notable shortfall in adequately trained personnel within the judiciary and public administration hampers their ability to keep pace with EU integration efforts. For instance, the Ombudsman operates with considerably fewer staff than outlined in the Action Plan for Chapter 23 and is still awaiting additional office space and resources necessary for effective functioning. The court system is currently burdened by a backlog of cases, highlighting the urgent need for better organisation and modernisation initiatives (such as the introduction of electronic case management systems and the recruitment of additional administrative staff). Inadequate coordination among authorities further undermines efficiency; although various strategies do exist, there is no central mechanism to oversee their implementation across ministries. Goal: Building institutional capacity must coincide with normative reforms. This entails increasing the budget for key institutions (including the judiciary, independent bodies and police training), implementing professional development programs for staff and digitising procedures wherever possible. Additionally, inter-ministerial working groups should be established to regularly monitor progress in executing action plans (e.g. a dedicated group for overseeing the implementation of the strategy against violence against women, comprising representatives from the police, prosecutors, social work centres and NGOs). Monitoring statistical indicators is also crucial. A systematic collection of data on instances of discrimination, violence, court outcomes and prison conditions, etc. would facilitate the assessment of progress and the identification of bottlenecks. Administrative capacity building is frequently supported by the EU (through IPA funds and expert assistance); hence, Serbia should leverage this support to maximise advancements in the area of fundamental rights.

4. Judicial independence and integrity in practice: Despite formal changes, judicial independence may still be compromised by entrenched practices and external pressures. Historically, judges and prosecutors were elected by the Assembly, which facilitated political influence. Although the new

constitutional framework aims to address this issue, a complete transition will take time. There are ongoing reports of pressure “behind closed doors,” such as indirect influence exerted through individual officials, or media campaigns targeting judges who make unpopular decisions. It is crucial to manage the disciplinary mechanisms for judges and prosecutors carefully to ensure they serve as tools for accountability rather than intimidation. Additionally, corruption within the judiciary, while often difficult to prove, further undermines citizens’ rights. If the public perceives that court outcomes are influenced by connections or bribes, trust in legal protection diminishes. Goal: To achieve the full implementation of the new judicial laws, it is essential that the High Judicial Council and the High Prosecutorial Council assume a genuine role as safeguards for judicial independence. It is necessary to establish a clear separation between politics and the judiciary; for instance, comments by politicians on individual cases should be prohibited (or severely sanctioned). Any instances of undue pressure on judges must be reported and prosecuted within disciplinary bodies, or even criminally, if they constitute intimidation. Enhancing transparency within the judiciary (such as publishing all judgments from higher courts and holding public sessions of the Constitutional Court for significant cases, etc.) can foster integrity and rebuild public trust. Strengthening the judiciary’s integrity will bring Serbia closer to the principles on the right to a fair trial before an independent court, as outlined in the Charter. Moreover, the success of this reform has the potential to alleviate one of the European Union’s primary concerns regarding Serbia’s readiness for membership

5. Reluctance and resistance within the system: Internal resistance to change is a significant factor that should not be overlooked. Every reform will inevitably affect someone’s interests. Initiatives aimed at introducing meritocracy in the judiciary, depoliticising the police and fight against corruption may all face opposition from those who have benefited from established practices. For instance, local power holders may resist stricter enforcement of anti-discrimination regulations, particularly if they are accustomed to controlling resources outside of established procedures. Similarly, some civil servants may view reform demands as additional

burdens without adequate incentives. Goal: To address this resistance, decisive political leadership is crucial. Leaders must demonstrate through example that reforms are not mere cosmetic changes, but rather essential measures for progress. It is vital to foster internal education and motivation within institutions. For example, police officers should understand that independence from political influence safeguards them against illegal orders. Judges need to recognise that upholding stronger integrity will enhance their public trust, while civil servants should be informed that adopting European standards could streamline their work through clearer procedures. Involving employees in the development of new procedures can significantly mitigate resistance. Furthermore, linking reward and promotion mechanisms to performance and adherence to ethical standards will create incentives for embracing a new culture that aligns with the Charter.

Conclusion for this chapter: All the challenges described – constitutional, political, institutional and social – are interconnected and require a comprehensive approach. Serbia cannot become a member of the European Union without meeting the criteria for the rule of law and human rights. Therefore, overcoming these obstacles is not merely a technical requirement but a fundamental interest of Serbian society. Alignment with the Charter of Fundamental Rights entails more than just fulfilling Brussels' requirements; it involves building a state in which dignity, freedom and justice are realities for all citizens. Key objectives on this path include: (a) to establish sustainable guarantees for an independent judiciary that will protect the rights of every individual; (b) to ensure effective protection of media freedom and pluralism of opinion; (c) to adopt a zero-tolerance approach toward discrimination and violence in any form; (d) to foster a responsible and transparent government that is accountable to citizens and (e) to strengthen awareness and a culture of human rights. Achieving these objectives will gradually eliminate barriers to the full implementation of the Charter. Efforts in this area must continue and accelerate. The European Commission and international organisations will persist in monitoring and assessing Serbia's progress. For example, every year, progress reports evaluate how many recommendations have been



fulfilled, and the current assessment indicates that many recommendations remain unmet and are still valid. It is evident, therefore, that the path to full compliance with the EU Charter requires perseverance, courage for reforms and the involvement of the entire society in the process. If Serbia successfully overcomes these challenges, not only will it meet the conditions for EU membership but it will also create better living conditions for its citizens, as the rule of law and respect for fundamental rights are the foundations of every democratic and prosperous society.



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