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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
MONTENEGRO

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

THE CASE OF MONTENEGRO AS A CANDIDATE COUNTRY

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Table of Contents

1. Introduction	3
2. The European Union and the human rights	4
3. Charter of Fundamental Rights of the European Union	7
4. The Contents of the Charter	10
5. Application of the Charter	12
5.1. Scope and interpretation of the rights contained in the Charter	14
5.2. What is the difference between rights and principles?	17
6. The case law of the Court of Justice of the European Union	18
Case Delvigne, C-650/13	19
Case Åkeberg Fransson, C-617/10	21
Case DEB (Deutsche Energiehandels- und Beratungsgesellschaft mbH), C-279/09	23
Case Stefan, C-329/13	24
Case Sayn-Wittgenstein, C-208/09	25
Case Kamberaj, C-571/10	27
Case Küçükdeveci, C-555/07	29
7. Coherence of the Union's policy towards third countries in the field of human rights	29
7.1. The process of Montenegro's accession to the European Union	31
7.2. Montenegro's Negotiation Process – Retrospective	32
7.3. Implementation of the EU Charter of Fundamental Rights in Montenegro	34
8. Conclusions	37
Bibliography:	38

1. Introduction

The protection of human rights represents a fundamental pillar of the European Union legal order. In the course of its development, from an economic union to a modern political union, the EU has gradually established a comprehensive system of protection of the fundamental rights of its citizens. The pinnacle of the process was the adoption of the Charter of Fundamental Rights of the European Union (hereinafter: the Charter) in 2000, which, after the entry into force of the Treaty of Lisbon in 2009, has acquired the same legal force as the Union's founding treaties. The Charter codifies a wide range of civil, political, economic and social rights, setting the clear standards that all EU institutions and Member States must comply with when applying the EU law.

The following chapters will consider the basic principles and practice of the application of the Charter, as well as an overview of the key rights guaranteed by it, including relevant case law. Special attention will be paid to the content of the Charter, its principles, structural units and the manner of the rights systematisation. There will be an analysis of the scope of application of the Charter, i.e. the situations in which it is directly applied to Member States and EU institutions.

We will also consider the coherence of the Union's policy towards third countries in the domain of the promotion and protection of human rights, with special emphasis on the conditions that the EU sets for the candidate countries and partner countries. In reference to this, special attention will be paid to the process of Montenegro's accession to the European Union, with a focus on fundamental rights and the rule of law as the crucial domains in the negotiations. As for the conclusion, the main challenges in the implementation of the Charter on Fundamental Rights in Montenegro will be presented.

The research methodology is based on the analysis of primary legal sources (including the Charter of Fundamental Rights of the EU, the Treaty on European Union, and the case law of both the Court of Justice of the EU and the European Court of Human Rights), as well as a comparative analysis of secondary sources (such as the European Commission's report on Montenegro). Additionally, a normative-analytical approach is applied to assess the harmonisation of the domestic legal framework and practice

with the standards set by the Charter. A descriptive method is also used to present the content and scope of the Charter, while a comparative method serves to contrast EU standards with the situation in Montenegro.

The main objective of this publication is to facilitate a deeper understanding of the Charter of Fundamental Rights of the European Union, particularly its importance within the EU legal system. The publication provides a detailed overview of the key rights guaranteed by the Charter, emphasizing the role of case law in interpreting and applying these rights. This approach aims to enhance comprehension of how the Charter influences legislative and administrative processes in the Member States.

2. The European Union and the human rights

The primary motive for the establishment of the European Union was economic in nature, aiming to create a single economic community among European countries. Therefore, the founding treaties of the Union initially did not include explicit provisions regarding human rights.² In the early stages of the EU's development, the prevailing view was that the protection of human rights primarily fell under the competence of the Council of Europe. At the same time, it was widely believed that economic integration, as the Union's main objective, would naturally exclude the possibility of fundamental rights violations. However, as European integration progressed, it became clear that human rights could not be considered in isolation from the activities of the Union's institutions.³

² The European Economic Community (EEC) and the European Atomic Energy Community (EUROATOM) were established by the Treaties of Rome in 1957, and in 1992, after the entry into force of the EU Treaty, the European Economic Community was renamed the European Union.

³ Among the key Union documents in this domain are the Charter of Fundamental Social Rights of Workers and the Declaration of Fundamental Rights and Freedoms. The Charter of Fundamental Social Rights of Workers, adopted in 1989 in the context of the Single European Act, is not legally binding but establishes fundamental standards concerning workers' rights. These include freedom of movement, employment and income rights, social and health protection, freedom of trade union organization, and gender equality.

The protection of human rights within the European Union is primarily ensured through the Court of Justice of the EU, complemented by cooperation with international organizations of which the EU member states are also members, such as the United Nations (UN), the Organisation for Security and Cooperation in Europe (OSCE), and the Council of Europe (CoE) (Vukčević, Čupić, 2024:76).

The key actors within the EU institutional framework that contribute to human rights protection include the European Parliament, the European Commission, the Council of the EU, the Court of Justice of the EU, and the European Ombudsman.⁴ The Court of Justice of the EU, comprising 27 judges—one from each member state—has played a pivotal role in the evolution of human rights protection standards through its jurisprudence.⁵

Explicit references to human rights in the Community treaties emerged notably with the Single European Act of 1987, whose Preamble underscores that fundamental rights are recognised in the constitutions and laws of the Member States, as well as in instruments such as the European Convention for the Protection of Human Rights and Fundamental Freedoms⁶ and the European Social Charter.

Similarly, the Declaration of Fundamental Rights and Freedoms, adopted by the European Parliament in the same year, encompasses a broad spectrum of civil, political, and social rights. Although not legally binding, it provided individuals with the means to address the European Parliament in writing regarding alleged violations of guaranteed rights. Nonetheless, the decisions by the European Parliament in those cases do not have the binding legal force (Vukčević, Čupić, 2024:77).

⁴ An important document that marked the late 1970s and emphasised the significance of inter-institutional cooperation is the Joint Declaration of the European Parliament, the Council, and the Commission on the Protection of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms from 1977. This Declaration represents the first joint instrument through which the three European institutions collectively affirmed their commitment to safeguarding fundamental rights, acknowledging not only the importance of human rights in the narrow sense but also the broader political dimension of integration.

⁵ For instance, in the case of *Nold v. Commission of the European Communities* (C-4/73), the Court of Justice of the European Union held that it could not endorse measures that contravened fundamental rights recognised in the national constitutions of the Member States.

⁶ It is also important to mention Protocol No. 14 to the European Convention on Human Rights, which provides for the accession of the European Union to the Convention, thereby integrating the EU into the international system of judicial oversight in the field

The 1992 Maastricht Treaty further institutionalised this approach by affirming that the Union shall respect the rights guaranteed by the aforementioned Convention, as well as those derived from the common constitutional traditions of the Member States.

This trend continued with the 1997 Treaty of Amsterdam, which affirmed that the Union is founded on the principles of liberty, democracy, and respect for human rights and fundamental freedoms—values recognized as common to all Member States.

Regarding the protection of human rights in relations with third countries, particular emphasis is placed on the abolition of the death penalty, the prevention of torture and inhuman or degrading treatment, the suppression of racism and xenophobia, the monitoring of elections, and the prosecution of war crimes and genocide.⁷

Fundamental human rights within the European Union were formally established with the adoption of the EU Charter of Fundamental Rights at the Nice European Council in 2000. However, until 2007, the Charter did not possess binding legal force for the Member States, functioning as a declaratory document.

Regarding case law, the Court of Justice of the European Union first addressed the protection of fundamental human rights in Case C-29/69, *Stauder v. the City of Ulm*. This case concerned the right to privacy, where the Court ruled in favour of safeguarding an individual's right not to disclose their identity when exercising their entitlement to social assistance. Following this decision, the Court began to develop a comprehensive approach to human rights protection within the EU through its judgments. Just one year later, in Case C-11/70, *Internationale Handelsgesellschaft*, the Court explicitly affirmed that “respect for fundamental rights forms an integral part of the general principles of law

of human rights. This integration enables individuals to lodge complaints against acts of EU institutions before the European Court of Human Rights.

⁷ In 1992, a so-called human rights clause was introduced into trade and cooperation agreements with third countries. This clause allows for the suspension of trade privileges, as well as the reduction or termination of aid programs, should the partner country fail to respect fundamental human rights.

protected by the Court of Justice, and that, the protection of such rights, whilst inspired by the constitutional traditions common to the member states, must be ensured within the framework of the structure and objectives of the Community.”

3. Charter of Fundamental Rights of the European Union

Since 1 December 2009, when the Treaty of Lisbon entered into force, the Charter of Fundamental Rights of the European Union (hereinafter: the Charter) has formally become part of the EU legal order. Of particular importance is Article 6(1) of the Treaty on European Union (TEU), which provides as follows:

“The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties. The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.”

These provisions establish the constitutional framework for the recognition and application of the Charter as a binding document encompassing a catalogue of fundamental rights within the European Union.

The preamble of the Charter acknowledges the universal nature of human rights, grounded in the principles of human dignity, freedom, equality, and solidarity (Vukčević, Čupić, 2024:77). The Charter encompasses a broad spectrum of civil, political, economic, social, and cultural rights, reflecting the EUs historically recognised economic identity. Moreover, the Preamble of the Charter highlights the individual as the focal point of all Union activities, underscoring the significance of European citizenship and the establishment of a common area of freedom, security, and justice. At the same time, it emphasizes the necessity of affirming and developing

shared values, alongside respecting the cultural and traditional diversity of the Member States (Vukčević, Čupić, 2024:78).

Pursuant to Article 6(1) of the Treaty on European Union (TEU), the Charter has the same legal status as the Treaties themselves. This means that the Charter is not only a binding source of EU law, but also occupies the highest level in the hierarchy of EU legal acts. Accordingly, all provisions of secondary EU law must be interpreted in accordance with the Charter. If such a harmonised interpretation is not possible, provisions of secondary law that are contrary to the Charter must be set aside. However, the Court of Justice of the EU alone has the power to declare provisions of EU act void, either through a preliminary ruling procedure (Article 267 TFEU) or an action for annulment (Article 263 TFEU).⁸

Furthermore, national legal provisions falling within the scope of the Charter must be consistent with the fundamental rights enshrined therein. National authorities are obligated to ensure that these provisions are interpreted and applied in accordance with the Charter. Courts play a particularly crucial role in this process. Where compliance with the Charter cannot be achieved through interpretation, courts are not only authorized but also required to disapply any national provision that conflicts with European Union law. It is important to emphasize, however, that such disapplication is only possible if the relevant provision of EU law meets the criteria for direct effect. Once these conditions are satisfied, any national court may refuse to apply the contested domestic provision without awaiting its formal repeal by legislative or constitutional means. Direct effect is a distinctive characteristic of certain EU law provisions, conferring the Charter with greater legal force compared to the European Convention on Human Rights, whose provisions do not possess equivalent effect within national legal systems.

According to Article 6(3) of the Treaty on European Union (TEU), the Union shall respect fundamental rights as guaranteed by the European Convention on Human Rights (ECHR) and as derived from the constitutional traditions common to the Member States, treating these rights as general principles of European Union law. Notably, it was

⁸ See also the following cases: C-92/09 and 93/09, *Volker und Markus Schecke*, C-236/09, *Test-Achats ASBL*, C-293/12, *Digital Rights Ireland*.

precisely these general principles that formed the foundation for the protection of fundamental rights within the Union's legal order before the adoption of a formal written instrument such as the Charter. The Treaty of Lisbon reaffirmed the significance of these general principles, positioning them alongside the Charter as a parallel source of fundamental rights protection.

Since the authors of the Charter took into account the case law of the Court of Justice of the European Union (CJEU) developed prior to the Lisbon Treaty concerning general principles of law, there is a significant degree of correspondence between the content of the Charter and those principles. However, no explicit legal rules have been established—either within the Charter itself or in the Treaties—to govern their mutual relationship. Based on current jurisprudence, it can be argued that the CJEU primarily relies on the Charter as the principal reference point in matters concerning the protection of fundamental rights, while still drawing upon earlier case law on general principles of law to interpret the Charter's provisions. In certain judgments, general legal principles remain the predominant source of law; however, this is mainly the case in matters factually linked to the period preceding the entry into force of the Lisbon Treaty.⁹

On the other hand, the general principles of law referred to in Article 6(3) of the Treaty on European Union may retain an autonomous role in the protection of fundamental rights that are not explicitly enshrined in the Charter. For instance, one may conceive of a fundamental right deriving from the constitutional traditions common to the Member States. Moreover, certain general principles of law are not directly concerned with the protection of fundamental rights, yet they may still interact with such rights as well as with the Charter. A classic example is the principle of effectiveness, which significantly influences the legal protection systems of the Member States, and their procedural rules in areas governed by European Union law as well.

According to this well-established principle, Member States must ensure that their national procedural rules do not make it impossible or excessively difficult to exercise rights conferred by EU law—whether fundamental or otherwise. The Court of Justice of the European Union

⁹ See also case C-441/14, *Dansk Industri*.

frequently applies this principle in conjunction with the fundamental right to effective judicial protection, as enshrined in Article 47 of the Charter.

As for its sources, the Charter draws upon various international and European human rights instruments, including the European Convention on Human Rights and Fundamental Freedoms, the Charter of Fundamental Social Rights of Workers, the European Social Charter, and the constitutional traditions of the Member States. Many of the Charter's norms closely reflect—and in some instances, directly take over—the corresponding provisions found in the European Convention on Human Rights.

The rights enshrined in the Charter may be classified into two main categories:

1. Rights already protected under the European Convention on Human Rights (ECHR), and
2. Rights that derive from the concept of European Union citizenship, which are granted exclusively to nationals of the Member States.

In this context, the European Convention on Human Rights (ECHR) holds a dual significance within EU law: first, as a source of inspiration for the development of general principles of law, and second, as a reference framework for interpreting the provisions of the Charter. In cases involving rights that correspond to those guaranteed by the ECHR, the Charter must not afford a lower level of protection than that provided by the Convention.

In this manner, the Charter assumes a central role in the EU's system of fundamental rights protection, engaging in a dynamic and reciprocal relationship with other rights-protection mechanisms within the Union and thereby contributing to the formation of a complex European legal order.

4. The Contents of the Charter

The rights enshrined in the Charter of Fundamental Rights of the European Union are organised into six thematic chapters, each reflecting the core values upon which the European Union is founded.

These chapters are: Dignity (Articles 1–5), Freedoms (Articles 6–19), Equality (Articles 20–26), Solidarity (Articles 27–38), Citizens' Rights (Articles 39–46), and Justice (Articles 47–50). In addition to these substantive rights, Chapter VII contains general provisions concerning the interpretation and application of the Charter.

The Charter incorporates rights derived from the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), as well as rights recognised by the Court of Justice of the European Union (CJEU) as fundamental principles of EU law. These encompass the so-called third generation of fundamental rights, which include economic, social, and cultural rights that are not comprehensively protected by other international human rights instruments.

The Charter also addresses various contemporary societal challenges, guaranteeing rights such as:

- The right to the protection of personal data (Article 8),
- The rights of the child (Article 24),
- The right of the elderly to live with dignity and independence (Article 25),
- Full integration of persons with disabilities (Article 26),
- Environmental protection (Article 37),
- Consumer protection (Art. 38).

Fundamental rights relating to human dignity and personal freedom include prohibitions of:

- The death penalty (Article 2),
- Torture or inhuman or degrading treatment or punishment (Article 4),
- Slavery and forced labour (Article 5).

The equality between men and women must be ensured in all areas, including employment, work, and pay, and the Charter permits the adoption of positive measures to promote full equality (Article 23).

The Charter affirms the freedom to conduct a business (Article 16) and the right to property (Article 17). It further introduces several articles related

to collective rights, particularly in the context of workers' rights and social protection. These include the right to collective bargaining and action, including the right to strike (Article 28).

The Charter also guarantees both the right to good administration (Article 41) and the right of access to documents (Article 42), thereby enhancing transparency within EU institutions.

Article 47 of the Charter also provides the right to an effective remedy before a tribunal and the right to a fair and public hearing within a reasonable time. Article 48 upholds the presumption of innocence and the right of defence, while Article 49 affirms the principles of legality and proportionality in relation to criminal offences and penalties. Additionally, the Charter incorporates the principle of *ne bis in idem* (Article 50), which prohibits an individual from being tried or punished twice for the same criminal offence.

In sum, the Charter encompasses a comprehensive catalogue of rights and principles that are fundamental to the protection of human dignity, freedom, and equality within the European Union.

5. Application of the Charter

Article 51 of the Charter, entitled 'Scope', constitutes the initial general provision that a national court must address: does the Charter apply in the particular case at hand? If the answer is affirmative, the court must then consider additional general provisions concerning the interpretation, legal effects, and level of protection of fundamental rights derived from the Charter.

In this context, the national court should raise and examine the following key questions:

1. Is there room for the application of domestic standards for the protection of fundamental rights?
2. What influence do the European Convention on Human Rights (ECHR) and the case-law of the European Court of Human Rights (hereinafter: the ECtHR) exert on the interpretation of the Charter?

3. What effects do the relevant provisions of the Charter produce? It is necessary here to distinguish whether a particular provision of the Charter constitutes a subjective right or a legal principle, as this distinction determines its legal effect.
4. Furthermore, where the Charter is deemed applicable, national courts may employ specific methods of judicial interaction (such as, for example, the doctrine of direct effect) to resolve conflicts with domestic law and to ensure consistent interpretation with domestic and international sources of fundamental rights protection—most notably, but not exclusively, constitutional norms and the ECHR.

However, should the Charter be deemed inapplicable in a particular case, the national court is not legally required to adjudicate in accordance with the framework established by EU law. Nevertheless, the judge may choose to refer to the Charter and the pertinent case law of the Court of Justice of the European Union for the purpose of interpreting national provisions relating to fundamental rights. Consequently, the scope of protection afforded to a right based on domestic sources may be extended by reference to the Charter.

A noteworthy example of the Charter's added value beyond its direct application is its occasional invocation before the ECtHR. While the Strasbourg Court is not legally obligated to apply the Charter, it nonetheless makes reference to it on occasion, given that its provisions are often more contemporary and, at times, more far-reaching than those of the Convention.

One such example is the case of *Scoppola v. Italy* (No. II)¹⁰, wherein the ECtHR revisited its prior interpretation of Article 7 paragraph 1 of the ECHR, which previously held that the provision did not extend to the retroactive application of a more lenient criminal law enacted subsequent to the commission of the offence. The Court acknowledged significant developments in the international legal landscape in the meantime, including the adoption of the Charter, whose Article 49 expressly recognises the principle of retroactive application of the more lenient criminal law (*lex mitior*). Accordingly, the ECtHR concluded that Article

¹⁰ Application No. 10249/03

7 paragraph 1 of the ECHR protects not only the principle of non-retroactivity of more stringent criminal laws but also, at least implicitly, the right to benefit from more lenient criminal law.

Another important case is *Schalk and Kopf v. Austria*¹¹, which concerns a broader interpretation of the personal scope of the right to marry. Whereas *ad litteram* interpretation of Article 12 of the ECHR suggests that the right to marry is confined to heterosexual couples, Article 9 of the Charter does not specify the intended beneficiaries of this right, thereby allowing space for the inclusion of same-sex unions. In its judgment, the ECtHR observed that, having regard, *inter alia*, to Article 9 of the Charter of Fundamental Rights of the European Union, it no longer considers that the right to marry under Article 12 of the ECHR must be restricted exclusively to the union of a man and a woman.

5.1. Scope and interpretation of the rights contained in the Charter

Article 52 of the Charter holds a particularly important role, as it delineates the scope of the rights and freedoms enshrined therein, as well as the principles governing their interpretation. Pursuant to this provision:

“Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.

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

¹¹ Application No. 30141/04

the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

In 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.”

By analysing Article 52, it is evident that it encompasses the key components of the system for the protection of fundamental rights in Europe—at both the national and EU levels, as well as within the framework of the ECHR. Specifically, paragraph 2 addresses rights enshrined in EU Treaties; paragraph 3 establishes the relationship with the ECHR; paragraph 4 acknowledges the significance of common constitutional traditions; and paragraph 6 refers to national legal systems and practices.

In its judgment of 26 February 2013 in the case *Åkerberg Fransson*, the Court of Justice of the European Union (Grand Chamber) clarified the conditions under which a national act is deemed to “implement EU law” within the meaning of Article 51 of the Charter.

In this ruling, the Court interpreted Article 51 paragraph 1 of the Charter, and the most pertinent excerpts from the judgment include the following paragraphs:

19. ... *that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by European Union law, but not outside such situations. In this respect the Court has already observed that it has no power to examine the compatibility with the Charter of national legislation lying outside the scope of European Union law. On the other hand, if such legislation falls within the scope of European Union law, the Court, when requested to give a preliminary ruling, must provide all the guidance as to interpretation needed in order for the national court to determine whether that legislation is compatible with the fundamental rights the observance of which the Court ensures.*
21. *Since the fundamental rights guaranteed by the Charter must therefore be complied with where national legislation falls within the scope of*

European Union law, situations cannot exist which are covered in that way by European Union law without those fundamental rights being applicable. The applicability of European Union law entails applicability of the fundamental rights guaranteed by the Charter.

22. *Where, on the other hand, a legal situation does not come within the scope of European Union law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction.*
23. *These considerations correspond to those underlying Article 6(1) TEU, according to which the provisions of the Charter are not to extend in any way the competences of the European Union as defined in the Treaties. Likewise, the Charter, pursuant to Article 51(2) thereof, does not extend the field of application of European Union law beyond the powers of the European Union or establish any new power or task for the European Union, or modify powers and tasks as defined in the Treaties.”*

At first glance, this judgment may not appear to provide significant clarity. The term “scope of Union law” is a legal concept which, in itself, does not offer definitive guidance as to whether the Charter applies in a given case. Nevertheless, although pre-Lisbon Treaty case law lacks a precise and unequivocal definition of the “scope of Union law,” it is possible to discern an essential meaning from it. Specifically, the mere assertion that a national measure infringes one or more fundamental rights is insufficient to trigger the application of EU fundamental rights.

Judge Allan Rosas, reflecting on Article 51(1) of the Charter in light of the *Åkerberg Fransson* judgment, explained:

“The Charter is applicable only if the case involves not only a provision of the Charter but also another rule of Union law. There must be a provision or principle of primary or secondary Union law which is directly relevant to the case. This is, in fact, the first conclusion to be drawn: the problem is not primarily the applicability of the Charter as such, but the relevance of other rules of Union law”.

For instance, Article 19 TFEU says that “*the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.*” Pursuant to this provision, the EU legislature has enacted significant legislation, including Directive 2004/113/EC, which implements the principle of equal treatment between men and women in access to and supply of goods and services, and Directive 2000/78/EC, which establishes a general framework for equal treatment in employment and occupation. In this context, the Charter may be invoked against national provisions that fall within the scope of these directives. Conversely, the protection afforded by the Charter cannot be invoked solely on the basis that the EU holds competence to combat certain forms of discrimination where the national provision in question pertains to an area not covered by these directives.

5.2. What is the difference between rights and principles?

Fundamental rights of the European Union serve as benchmarks for the interpretation and as the basis for the validity of acts adopted by the institutions, bodies, and agencies of the Union. They also represent the parameters for the harmonisation of national acts with European Union law within its scope of application.

Article 52, paragraph 5 of the Charter mention: “*The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.*”

In other words, Article 52 paragraph 5 of the Charter establishes a framework of limited judicial review for provisions embodying “principles,” as opposed to those conferring “rights.”

This is an explanation accompanying Article 52 paragraph 5 of the EU Charter of Fundamental Rights: “*Paragraph 5 clarifies the distinction between ‘rights’ and ‘principles’ set*

out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51(1)). Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities."

As regards the scope of application, the Charter does not provide an exhaustive list of the principles it encompasses. Certain provisions of the Charter may embody characteristics of both "rights" and "principles," such as Article 25 (rights of the elderly), Article 26 (integration of persons with disabilities), and Article 37 (protection of the environment). Moreover, some provisions combine elements of rights and principles, including Article 23 (equality between women and men), Article 33 (family and professional life), and Article 34 (social security and social assistance).

Conversely, individuals are not entitled to invoke the "principles" directly to preclude the application of national provisions that conflict with them. It remains uncertain whether these "principles" may function as interpretative parameters or as grounds for assessing the validity of any Union or national measure falling within the scope of the Charter, nor whether the purpose of such provisions is to enable the direct application of the principles themselves.

To date, the Court of Justice of the European Union has referenced Article 52(5) of the Charter in only one case, namely Case C-356/12 *Glatzel*, which concerned Article 26 of the Charter (pertaining to the integration of persons with disabilities). Nonetheless, this case did not provide a conclusive resolution to the outstanding issues. It is important to mention that any uncertainties concerning the legal effect of the Charter's principles may be subject to a preliminary ruling before the Court of Justice of the European Union.

6. The case law of the Court of Justice of the European Union

The following examples illustrate cases that satisfy the criteria for the application of the Charter. It is important to emphasize that provisions

which solely confer competence upon the Union may not trigger the application of the Charter

A case falls within the scope of the Charter when it concerns:

- **National provisions implementing an obligation derived from a norm of European Union law, which is primarily addressed to the national legislature;**

The Charter applies to national measures adopted to fulfil obligations arising under European Union law, including regulations (which are directly applicable in national law) and directives (which bind the Member States to whom they are addressed as to the result to be achieved, while leaving the choice of form and methods of achievement to the national authorities). Member States of the European Union are obligated to ensure that all national legislative measures enacted to implement Union law fully comply with the fundamental rights guaranteed by the Charter, regardless of whether these measures take the form of directives, regulations, or provisions of primary EU law. Where a conflict between national measures and the fundamental rights established under European Union law is identified, competent national courts are required to submit a preliminary reference to the Court of Justice of the European Union. This procedure is intended to determine the compatibility of the relevant provisions of European Union law with fundamental rights.

Case Delvigne, C-650/13

Mr. Delvigne, a French national, was sentenced to twelve years' imprisonment by a final judgment delivered in March 1988 following his conviction for a serious criminal offence. At that time, the French Criminal Code prescribed the automatic loss of civil rights upon conviction. In 1992, a new law repealing the old Code was enacted, effective from 1 March 1994, which provided that the total or partial loss of civil rights must be subject to a court judgment and, in the case of a serious criminal offence, could not exceed ten years. However, the new law contained a provision confirming that the loss of civil rights resulting from a criminal conviction that had become final prior to its entry into force would continue to apply as prescribed by law, thereby precluding retroactive application of the more lenient regime to Mr. Delvigne.

In 2012, this gentleman challenged before the court the decision of the commission ordering his removal from the electoral roll. The national court raised questions regarding the compatibility of the contested provisions with the Charter of Fundamental Rights of the European Union, citing Article 39(1) of the Charter, which guarantees the right of EU citizens to vote in elections to the European Parliament, and Article 49 of the Charter, which enshrines the principle of retroactivity *lex poenalis mitior*.

The Court of Justice recalled that, under Article 8 of the 1976 Act concerning the election of Members of the European Parliament, “*the electoral procedure shall be governed in each Member State by its national provisions.*” It further held that Member States are required to legislate for the election of Members of the European Parliament by direct universal suffrage, conducted by free and secret ballot, pursuant to Article 14(3) TEU and Articles 1(3) and 1(8) of the 1976 Act. In this context, the Court ruled that a Member State which, in its legislation, excludes EU citizens convicted of a criminal offence before 1 March 1994 is implementing EU law in conformity with Article 51(1) of the Charter. Finally, the Court examined the compatibility of the contested national provisions with Articles 39(1) and 49 of the Charter and confirmed their compatibility.

- **National provisions on sanctions applicable to breaches of obligations under Union law**

European Union legal measures increasingly require Member States to establish effective, proportionate, and dissuasive sanctions for breaches of specific obligations set out in those measures or in national legislation implementing Union law. Member States may fulfil this obligation by adopting specific sanctions, which must be compatible with the fundamental rights guaranteed by the Charter. Alternatively, Member States may rely on sanctions already applicable to analogous (comparable) national offences. In such cases, the Charter applies only where those sanctions are imposed in relation to breaches of obligations arising under Union law.

Case Åkeberg Fransson, C-617/10

Mr. Åkeberg Fransson, a self-employed fisherman, submitted inaccurate information in his tax returns, resulting in the payment of a reduced amount of Value Added Tax (VAT) compared to prescribed. Under Swedish law, such conduct may give rise to both criminal prosecution and administrative proceedings, exposing the offender to a criminal fine as well as a tax surcharge. Following the final decision to impose the tax surcharge on Mr. Fransson, the referring court—the Swedish Criminal Court (Haparanda tingsrätt)—called into question whether the principle of *ne bis in idem* (not twice for the same), enshrined in Article 50 of the Charter, required the dismissal of the criminal charges and the annulment of the corresponding national provision.

The Swedish legislation was adopted before Sweden became a member of the EU. The Court of Justice of the European Union (CJEU) held that the Charter was applicable, reasoning that “the tax penalties and criminal proceedings to which Mr Åkerberg Fransson has been or is subject are connected in part to breaches of his obligations to declare VAT”. The Court cited Articles 2, 250, and 273 of Directive 2006/112/EC, as well as Article 4(3) of the Treaty on European Union (TEU), concluding in paragraph 25 of its judgment that “every Member State is under an obligation to take all legislative and administrative measures appropriate for ensuring collection of all the VAT due on its territory and for preventing evasion”.

Under the opinion of the Court, the fact that the system of the Union own resources includes revenue from application of a uniform rate to the harmonised VAT, implying the existence of “*direct link between the collection of VAT revenue in compliance with the European Union law applicable and the availability to the European Union budget*”. The Court explained that “Given that the European Union’s own resources include... revenue from application of a uniform rate to the harmonised VAT assessment bases determined according to European Union rules, there is thus a direct link between the collection of VAT revenue in compliance with the European Union law applicable and the availability to the European Union budget of the corresponding VAT resources, since any lacuna in the collection of the first potentially causes a reduction in the second”. To reinforce the connection between the contested national legislation and

Union law, the Court also referenced Article 325 of the Treaty on the Functioning of the European Union (TFEU), which mandates that the Union and its Member States to counter fraud and any other illegal activities affecting the financial interests of the Union by means of effective measures. The Court underscored that Member States are obliged to “*take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests*”.

- **National procedural provisions enabling the exercise of legal protection before national courts with respect to rights guaranteed under EU law;**

In the Treaty of Lisbon, Article 19(1) TEU provides that “*Member States shall provide the legal remedies necessary to ensure effective legal protection in the fields covered by Union law,*” while Article 47 of the Charter, in accordance therewith, guarantees the right to effective judicial protection. This right applies to national procedural provisions which, irrespective of whether they were adopted solely and exclusively for that purpose, govern the exercise of rights before national courts by individuals, rights that are conferred upon them on the basis of EU law. (Such rights may arise from regulations, directives, and other provisions of primary Union law, even when they are not provisions of the Charter itself).¹²

¹² An individual who believes that their fundamental rights under EU law have been violated may initiate an action for damages against the responsible Member State. Such an action is brought before the competent national court, which, in cases of uncertainty regarding the alignment of national legislation with EU law, may refer a question to the Court of Justice of the European Union for a preliminary ruling to obtain additional guidance on the application of EU law. This mechanism ensures legal certainty and the correct enforcement of EU law, as exemplified in case C-279/09 DEB, which addresses the effectiveness of judicial protection. Victims of breaches of EU law are entitled to compensation, and national courts bear the responsibility to uphold and apply the principles of EU law in such proceedings.

Case DEB (Deutsche Energiehandels- und Beratungsgesellschaft mbH), C-279/09

The applicant, a company engaged in the natural gas sector, asserted that it had incurred damages due to the delay in transposing two directives concerning the supply of natural gas into the German legal framework. Consequently, it sought to initiate proceedings against Germany pursuant to previous *Francovich* case law. Given the fact it did not have income and assets, DEB was unable to pay the procedural costs in advance, as mandated by the pertinent domestic legislation; for the same reason, it was not able to retain a lawyer, whose representation is compulsory under German law for this category of litigation. Relying on the interpretation of the relevant domestic provisions stemming from the case law of the Bundesverfassungsgericht (Federal Constitutional Court), DEB's application for legal aid was denied. The company challenged this refusal on appeal. While the court of first instance dismissed the appeal, the Higher Regional Court (Oberlandesgericht) referred a preliminary question to the Court of Justice of the European Union (CJEU), essentially addressing the compatibility of the relevant domestic civil procedural provisions with the EU principle of effectiveness.

After noting that the case concerned “*the principle of effective judicial protection, which is a general principle of EU law,*” the CJEU immediately pointed out that, “*as regards fundamental rights, it is important, since the entry into force of the Treaty of Lisbon, to take into account the Charter of Fundamental Rights of the European Union (‘the Charter’), which has the same legal value as the Treaties*” (para. 30). The Court further recalled that “*Article 51(1) of the Charter stipulates that its provisions are addressed to Member States only when they are implementing Union law.*” Accordingly, the Court decided to “*reformulate the question referred so as to concern the interpretation of the principle of effective judicial protection, as guaranteed by Article 47 of the Charter.*” In doing so, the Court implicitly confirmed that national procedural rules facilitating the exercise of actions designed to ensure the effective enjoyment of rights autonomously conferred by EU law —such as, for example, the right of Member States

to compensate for damage arising from breaches of Union law—must be consistent with EU fundamental rights.¹³

- **The application of rules of European Union law, or of national provisions implementing those rules, by a national court or competent administrative authority;**

The obligation of Member States to act in accordance with the fundamental rights guaranteed by the Charter when implementing European Union law does not apply exclusively to legislative bodies. This duty extends equally to other state bodies entrusted with exercising rights within the national legal system.

In this regard, national courts, administrative authorities, and all other institutions responsible for applying or interpreting legal rules derived from EU law must do so in a manner consistent with the fundamental rights of the Union. For example, when a court issues a decision based on a regulation adopted to implement EU law, it must ensure that such a decision does not infringe any rights protected by the Charter.

This obligation ensures that European standards of human rights protection are consistently applied across all Member States—not only in legislative enactments but also in everyday judicial and administrative practice.

Case Stefan, C-329/13

After Mr. Stefan's property sustained significant damage during a flood caused by the overflow of the Drava River, he submitted a request to the competent Austrian authority seeking information regarding water level management. His request was denied on the grounds that disclosing such information could potentially prejudice ongoing criminal proceedings against the dam keeper and compromise the right to a fair trial. Notably, in the *Stefan* case, the Member State had failed to transpose Article 4(2)(c) of

¹³ In certain instances, the Court of Justice of the European Union (CJEU) has expanded the scope of protection beyond that of the European Court of Human Rights (ECtHR). For example, in the *DEB* case, following a detailed analysis of ECtHR jurisprudence, the CJEU primarily relied on Article 47 of the Charter to extend the right to legal aid from natural persons to legal persons, thereby providing broader protection than that recognized in ECtHR case law.

Directive 2003/4/EC on public access to environmental information, which permits an exemption from disclosure obligations regarding environmental information to safeguard the right to a fair trial. However, the Court of Justice of the European Union (CJEU) stated that *“that Member States are, in any event, required to use the margin of appreciation conferred on them by point (c) of the first subparagraph of Article 4(2) of that directive in a manner which is consistent with the requirements flowing from article 47 of the Charter”* (para. 34). The Court further observed, *“since all authorities of the Member States, including the administrative and judicial bodies, must ensure the observance of the rules of EU law within their respective spheres of competence”*. In line with that, the Court concluded that, *“an interpretation to the effect that Directive 2003/4 authorises Member States to adopt measures that are incompatible with the second paragraph of Article 47 of the Charter or with Article 6 TEU cannot be accepted”* (para. 36).

- **National measures based on a derogation provided for in EU law**

In certain cases, EU law allows Member States to derogate from obligations imposed by EU law. One of the most important examples concerns the area of free movement within the EU. The Treaties or EU legislation lay down the grounds on which Member States may justify national measures restricting the fundamental freedoms of movement of goods, capital, services, and the free movement of Union citizens. For example, the free movement of EU citizens may be restricted on grounds of public health, public policy, or public security, in accordance with Directive 2004/38/EC. However, reliance on these grounds can only justify a restrictive national measure if that measure is fully compatible with the fundamental rights of the European Union.

Case Sayn-Wittgenstein, C-208/09

In 2003, the Verfassungsgerichtshof (Austrian Constitutional Court) interpreted the Austrian Law on the Abolition of Noble Titles—which holds constitutional status—as presenting considerable complexity for Austrian citizens. Ms. Ilonka Fürstin von Sayn-Wittgenstein, an Austrian citizen residing in Germany, was notified that her surname would be altered to ‘Sayn-Wittgenstein.’ The name “Fürstin (Princess) von Sayn-

Wittgenstein” was the surname under which she had been registered in the Austrian civil registry following her adoption by a German citizen. The applicant appealed to the Verwaltungsgerichtshof (Administrative Court), which subsequently referred a preliminary question to the Court of Justice of the European Union (CJEU). The question essentially concerned whether the prohibition on holding noble titles—including those of foreign origin—could be regarded as a justified derogation from Article 21(1) TFEU on grounds of public order.

The Court held that the applicant could validly invoke Article 21 TFEU, as *“a national of a Member State and, in her capacity as citizen of the Union, has made use of the freedom to move to and reside in another Member State”* (para. 39). The Court emphasized that *“that a person’s name is a constituent element of his identity and of his private life, the protection of which is enshrined in Article 7 of the Charter of Fundamental Rights of the European Union and in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms”*. The Court acknowledged that discrepancies in surnames could complicate the exercise of the right to free movement, as the applicant would be required to constantly clarify questions regarding her identity. Nevertheless, the Court found that the objective pursued by the contested national legislation—namely, the implementation of the principle of equal treatment enshrined in the Austrian Constitution—was compatible with Union law, underscoring that the same principle is enshrined in Article 20 of the Charter (para. 89). Reinforcing its prior case law, the Court stated that *“the need for, and proportionality of, the provisions adopted are not excluded merely because one Member State has chosen a system of protection different from that adopted by another State”* (para. 91). Finally, after noting that, *“in accordance with Article 4(2) TEU, the European Union is to respect the national identities of its Member States, which include the status of the State as a Republic”*, the Court concluded that the prohibition was not disproportionate to its declared objective (paras. 92 and 93).

- **National provisions clarifying the terms contained in the legal acts of the European Union.**

In certain instances, Union acts provide definitions of specific terms and concepts used within the legislative act itself, thereby conferring upon

these terms an autonomous and uniform meaning within EU law. In cases of ambiguity, the Court of Justice of the European Union (CJEU) has jurisdiction to interpret them.

Conversely, there are situations where EU acts do not include clear and uniform definitions of certain terms but instead refer to definitions accepted in the national legislation of the Member States. This approach reflects the EU legislators' intention to respect the legal and cultural diversity among Member States, particularly regarding the meaning and scope of certain terms.

However, the CJEU has unequivocally held that the absence of an autonomous EU law definition does not grant Member States unfettered freedom to interpret such terms. In other words, Member States may not apply their national definitions in a manner that would obstruct or impede the attainment of the objectives of EU legislation. They remain bound to implement these provisions in conformity with the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union.

Accordingly, when a Member State relies on its national legislation to define a term contained in an EU act, such definition constitutes an implementation of EU law within the meaning of Article 51(1) of the Charter. Consequently, this implementation must respect the fundamental rights protected by the Charter.

Case Kamberaj, C-571/10

The contested Italian provincial law allocates housing assistance funds based on a weighted average determined by the numerical size and needs of each category. However, while for Italian citizens and Union citizens both factors considered in determining the weighted average are subject to the same multiplier of 1, for third-country nationals the factor relating to their number is subject to a multiplier of 5, while their needs factor remains subject to a multiplier of 1. The Court of Bolzano expressed doubts regarding the compatibility of this national legislation with the principle of non-discrimination between long-term third-country nationals and Union citizens as established by Directive 2003/109/EC. Having identified that the funding distribution mechanism engenders differential treatment between these two categories, the Court examined whether it fell within

the scope of Article 11 thereof, which addresses discrimination concerning “social security, social assistance and social protection as defined by national law”. The Court acknowledged that “such a reference (to national law) signifies that the European Union legislator intended to respect the differences among Member States concerning the meaning and precise scope of the concepts in question.” Nevertheless, it emphasized that this “does not imply that Member States may undermine the effectiveness of Directive 2003/109 when applying the principle of equal treatment enshrined therein.” Recalling that, pursuant to Article 51(1) of the Charter, Member States are obliged to uphold the fundamental rights guaranteed by the Charter “when implementing Union law,” the Court relied on Article 34(3) of the Charter, which stipulates that “the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources.” The Court further held that national social security and assistance measures fulfilling the objectives outlined in Article 34(3) of the Charter have to fall within the equal treatment obligation under the Directive. Consequently, it is for the national court to determine whether the national law, in this case regional Italian law satisfies this criterion. Should that be the case, the Court of Bolzano must conclude that the national law is not in compliance with the principle of non-discrimination as applied by the Directive.

- **National measures directly affecting areas of EU law**

The Court of Justice of the European Union has repeatedly ruled on instances where national measures were adopted prior to a Union directive becoming mandatory for the Member States. These national measures were neither intended to implement the directive nor aligned with its provisions and were, in some cases, contrary to it. However, at the time when the relevant situations occurred, the deadline for transposing the directive had already expired, which means that the directive should have been implemented into national legislation.

In such circumstances, the Court applied the Charter of Fundamental Rights to these national measures by virtue of their connection to the legal domain governed by the directive. Despite these measures having been adopted before the directive should have been implemented, the Court considered the Charter applicable because it concerns the fundamental rights and freedoms of EU citizens. The Court concluded that EU law,

which ought to have been implemented by that time, mandates respect for fundamental rights, thereby requiring that national measures be harmonised with the Charter.

Case Küçükdeveci, C-555/07

The employee, Mrs. Küçükdeveci, challenged a national provision which she thought was incompatible with Directive 2000/78/EC. Under Article 622, paragraph 2 of the German Civil Code, periods preceding the employee's 25th birthday were excluded when calculating the notice period. As a result, Mrs. Küçükdeveci's notice period was computed as if she had only three years of service, despite her actual service amounting to ten years.

The contested national provision that brought this practice was not enacted to implement Directive 2000/78/EC but was in direct conflict with it.

The Court of Justice of the European Union affirmed that Directive 2000/78/EC was already in force at the time the national measure was adopted, as the deadline for its transposition had elapsed. Consequently, the national law had fell within the scope of EU law, addressing a matter governed by the directive, namely, dismissal conditions. The Court further concluded that the Charter of Fundamental Rights applied to the dispute, as it concerned fundamental rights of the employee protected under EU law.

This connection is particularly significant, from the point of view of the case, in cases involving private parties alone (so-called horizontal disputes), especially when the focus is on the divergence between national law provisions and an EU directive enshrining a fundamental right. Where a Charter provision meets the criteria for direct effect, national courts may invoke the Charter to disapply conflicting national provisions, thereby bypassing the lack of horizontal direct effect of the directive.

7. Coherence of the Union's policy towards third countries in the field of human rights

The term "third country" denotes all states that are not members of the European Union, with which the EU has established some form of an

agreement (Popović, 2008:170). A distinction should certainly be made between candidate countries—i.e., potential future members of the Union—and countries from the African, Caribbean, and Pacific (ACP) regions.

Following the Copenhagen European Council in 1993, a set of accession criteria, commonly known as the Copenhagen criteria, were codified to determine the political and economic requirements for new member states joining the EU. These criteria encompass:

- The stability of institutions guaranteeing democracy, the rule of law, respect for human rights, and the protection of minority rights;
- The existence of a functioning market economy capable of coping with the competitive pressures and market forces within the European Union;
- The capacity to assume the obligations of EU membership, including the effective implementation of the rules, standards and policies that form the *acquis communautaire* and adherence to the objectives of political, economic, and monetary union.

Based on these criteria, democracy, the rule of law and respect for human and minority rights are included in the European agreements for the first time as prerequisites for entry into the Union, while “institutionalized political dialogue is being introduced in a legally binding form” (Weidenfeld & Wessels, 2005:277). The Copenhagen criteria thus serve not only for Union to promote development of human rights at the EU level, but also in the countries bound by contractual relations with it. A special generation of European agreements, notably the Stabilisation and Association Agreements (SAAs) developed in the late 1990s, including those for Southern and South-eastern Europe, exhibit additional specificity. It is reflected in the fact that mentioned criteria incorporate provisions of security and stability, intended to establish contractual relations with countries that were affected by war conflicts at that time (Popović, 2008:172).

Within this context, a pertinent issue arises regarding the problems encountered during the implementation of agreements between the EU and third countries, especially concerning clauses on the respect for human rights. The process of accession to the European Union is based on clearly

defined rules and standards that each candidate country must meet in order to become a member. These rules aim to ensure that candidate states fully embrace the fundamental values of the Union, such as democracy, the rule of law, and respect for human rights. Consequently, human rights clauses in agreements with third countries often pose challenges. Non-member states must harmonise their domestic practices with EU values, which can be particularly complex given differing political, legal, and socio-cultural contexts.

7.1. The process of Montenegro's accession to the European Union

Following the decision of its citizens in a referendum held on 21 May 2006, Montenegro re-established its independence. At the session convened on 3 June 2006, the Parliament of Montenegro adopted the Decision on the Proclamation of Independence of the Republic of Montenegro and the Declaration of the Independent Republic of Montenegro. The introductory section of the Declaration functions as a preamble, articulating the fundamental principles and values underpinning Montenegro's form of government, emphasizing its civic character, respect for human and minority rights, adherence to principle of parliamentary democracy, the rule of law, and a market economy. The remainder of the Declaration delineates the fundamental principles of Montenegro's foreign policy orientation, including respect for the principles and commitments established by the charters of the United Nations, the Council of Europe, and other international organizations, pursuit of EU integration, and respect for international law principles, including rulings of the International Court of Justice and the International Criminal Tribunal for the former Yugoslavia (now the International Residual Mechanism for Criminal Tribunals).

Article 15 of the Constitution defines Montenegro's relationship with international organizations and, in paragraph 3, explicitly affirms the Parliament of Montenegro's authority to determine the modalities of accession to the European Union, recognizing it as a priority international integration of vital interest for Montenegro state. In doing so, Article 15 reaffirms Montenegro's proactive stance toward EU integration, as reflected in the Declaration of Independence, specifically in the section addressing "*accession to European and Euro-Atlantic structures*," point 2, indent 5, as well as in the preamble to the Constitution, which emphasizes dedication "*to cooperation on equal footing with other nations and states*

and to the European and Euro-Atlantic integrations.” These programmatic provisions acquire added significance as they constitute explicit constitutional and legal obligations (Vukčević, 2021:86).

Within the context of European integration, the rule of law and respect for human rights have been fundamental values of the European Union since its establishment. The existence of an effective, independent, and high-quality judiciary is regarded as a prerequisite for safeguarding democratic values. Judicial independence is of paramount importance for the constitutional state, guaranteeing the protection of human rights¹⁴ and serving as a key component of the rule of law by ensuring oversight of the executive and legislative branches to prevent abuse of power and maintain the separation of powers.

The significance of judicial independence is further underscored by the Constitution of Montenegro, which, in its preamble, emphasizes the significance of the independence of the courts through the citizens’ commitment to live in a state where the rule of law is, among other things, highlighted as the highest social value. Additionally, the Constitution’s second section, which addresses the organisation and safeguards of human rights, contains essential provisions for the exercise of judicial functions and the status of the courts, including equality before the law, the right to legal remedy, the right to a fair and public hearing, the principle of legality, the presumption of innocence, the principle of *ne bis in idem*, among others.

7.2. Montenegro’s Negotiation Process – Retrospective

Montenegro reaffirmed its commitment to a comprehensive process of transition and reform—encompassing political and economic transformation, as well as the consolidation of parliamentary democracy—by signing the Stabilisation and Association Agreement and the Interim Agreement on Trade and Related Matters in Luxembourg in October 2007. This milestone also marked the commencement of Montenegro’s formal contractual relationship with the European Union. With a broad political

¹⁴ In this regard, the principle of judicial independence has become a universal value, enshrined in numerous international conventions and contemporary constitutions.

consensus and a high level of support among Montenegrin citizens for EU membership, Montenegro officially submitted its application for membership in the Union in December 2008. The application initiated the process of internal reforms and preparatory measures aimed at opening accession negotiations. These efforts focused on enhancing democratic capacities and establishing independent institutions, in alignment with Article 2 of the Treaty on European Union, particularly emphasizing respect for human dignity, freedom, democracy, equality, the rule of law, and human rights.

Already in 2010, Montenegro was granted candidate country status, and a year later, the European Commission published the Progress Report on Montenegro, recommending the commencement of accession negotiations with the European Union. These negotiations were officially launched in 2012 with the convening of the first Intergovernmental Conference between Montenegro and the EU. Through its prospective accession, Montenegro committed to adopting the *acquis communautaire* in the areas of justice, freedom, and security, with the aim of fully contributing to the implementation of European standards regarding judicial independence, respect for human rights, the relentless fight against corruption and organized crime, and the enforcement of key international legal instruments in these domains. In light of the conclusions adopted at the Thessaloniki Summit, where the Union reaffirmed its unequivocal support for the European future of the Western Balkan countries, and with the introduction of the criterion of “progress based on individual merit”, an effort was made in 2018 to reinvigorate the negotiation process through the adoption of the Strategy “A credible enlargement perspective for and enhanced EU engagement with the Western Balkans.” This strategy underscored the Union’s intention to foster a stable, strong, and united Europe that would be founded on shared values.

Building on the strategic commitment to the European perspective of the Western Balkans, the Union introduced a new accession methodology in February 2020 aimed at rendering the accession negotiations more dynamic and credible. This approach anticipates significantly greater engagement from candidate countries in implementing fundamental reforms in critical areas such as the rule of law and human rights. Following the adoption of this methodology, thematic clusters were established, grouping several negotiation chapters to drive candidate

countries to establish a more intense political focus on sectors of particular importance to European integration. Montenegro, as a candidate country, was the first to apply this new methodology, resulting in the organization of 33 negotiation chapters into six clusters, which will be opened collectively as a whole, upon fulfilment of benchmarks. However, negotiations on key reforms—specifically Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom and Security)—will remain open until the conclusion of the membership negotiations, with progress in these areas deemed decisive for the overall advancement of the negotiation process.

With the successful receipt of the IBAR (Interim Benchmark Assessment Report) in June 2024, Montenegro aims to commence the closure of the remaining negotiation chapters. Under the slogan of “28 member states by 2028,” which may carry a note of premature optimism, the work on implementing further reforms in the realms of the rule of law and fundamental human rights continues to lie ahead.

7.3. Implementation of the EU Charter of Fundamental Rights in Montenegro

Although Montenegro is not yet a member of the European Union, it has committed to adhering to the standards set forth in the Charter through its accession negotiations, particularly under Chapter 23 (Judiciary and Fundamental Rights). The Constitution and numerous Montenegrin laws already enshrine fundamental rights such as the right to life, non-discrimination, freedom of expression, and the right to a fair trial, and are largely harmonised with the Charter.

The table below summarizes the implementation of selected Charter rights in Montenegro.

Charter Right	Implementation in Montenegro	Note
Right to life (Art. 2)	The Constitution of Montenegro guarantees the right to life; prohibition of the death penalty	Fully aligned.

Charter Right	Implementation in Montenegro	Note
Prohibition of torture and inhuman treatment (Art. 4)	The Constitution and the Criminal Code prohibit torture	Nevertheless, prison and police practices reportedly remain problematic, as per reports.
Right to liberty and security (Art. 6)	The Constitution and the Criminal Procedure Code regulate this right	Occasional complaints of detention abuses.
Right to an effective remedy and a fair trial (Art. 47)	Constitution, Law on Courts, Criminal Procedure Code	Efficiency and independence of the judiciary continue to be key negotiation issues.
Right to protection of personal data (Art. 8)	Law on the Protection of Personal Data	Aligned with GDPR standards, although implementation remains inconsistent.
Right to freedom of expression and information (Art. 11)	The Constitution guarantees freedom of expression	Threats and attacks against journalists continue to raise concerns.
Right to education (Art. 14)	Constitution and Law on Education	Generally aligned, yet challenges persist in ensuring inclusive education.
Prohibition of discrimination (Art. 21)	Constitution and Law on the Prohibition of Discrimination	Discrimination against Roma, LGBTIQ persons, and persons with disabilities remains a significant issue.

The most recent European Commission Progress Report on Montenegro, in the area of fundamental rights, acknowledges that the legislative and institutional frameworks are largely in place and that Montenegro is, to a significant extent, meeting its international obligations concerning the protection of human rights. Nevertheless, the Report underscores the necessity for more efficient implementation of the existing legal

framework to ensure effective access to justice and the exercise of rights in both administrative and judicial proceedings, particularly for vulnerable social groups. A notable challenge within Montenegro's human rights protection system pertains to the insufficient institutional capacity, which directly impacts the effective enforcement of legislation and the realization of guaranteed rights in practice.

Roma and Egyptians, persons with disabilities, and members of the LGBTIQ community have been identified as particularly vulnerable groups, who continue to face discrimination, hate speech, and hate-motivated crimes. In this context, Montenegro must make substantive progress in implementing all outstanding recommendations issued by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment over the forthcoming year. Moreover, it is imperative to enhance the implementation of the Strategy for the Improvement of the Position of Roma and Egyptians in Montenegro, in full compliance with the commitments undertaken under the Poznań Declaration. Additionally, the adoption of a new Law on the Prohibition of Discrimination and a new Law on the Protection of Personal Data, harmonized with the EU acquis, remains essential.

With regard to freedom of expression, it is important to note that problems persist concerning threats and acts of violence against journalists¹⁵. The Report acknowledges that Montenegro possesses a pluralistic media environment; however, in the realm of freedom of expression, the country remains between having some level of preparation and moderate level of preparation. Accordingly, it is recommended that the State continue to provide prompt and effective law enforcement and protection to journalists against all forms of violence, while upholding a zero-tolerance policy to any form of pressure or harassment of media representatives. Moreover, it is necessary to ensure full protection of the public broadcaster from any form of undue influence on the editorial, institutional or financial independence, with the obligation to comply fully with the law and with the highest standards of professional integrity and accountability.

¹⁵ In recent years, Montenegro has experienced a significant rise in hate speech, accompanied by verbal threats directed at journalists and civil society activists.

While Montenegrin courts are not mandated to apply the Charter directly, European standards frequently serve as normative references in judicial decisions, particularly in matters concerning human rights, freedom of expression, and the right to a fair trial. In numerous instances, Montenegrin courts invoke the European Convention on Human Rights (ECHR) as a binding legal instrument and refer to the European Court of Human Rights in Strasbourg as it provides interpretative guidance on the rights enshrined therein.

Upon accession to the European Union, Montenegrin courts will be required to apply the same principles and interpretative standards previously examined within the framework of the EU Charter of Fundamental Rights. This obligation is essential to ensure the effective and concrete enforcement of the rights enshrined in the Charter within Montenegro, a factor of paramount importance for the further European integration of Montenegro and the enhancement of its legal system. Accordingly, it can be concluded that the application of the Charter transcends a mere formal obligation; it constitutes a fundamental key in the construction of a democratic and legally secure society, consistent with European standards.

8. Conclusions

As evidenced by the earlier analysis of the Court of Justice of the European Union's jurisprudence, the Charter stands as a pivotal instrument for the preservation and advancement of human rights within the EU legal order. Its legally binding nature, established following the entry into force of the Lisbon Treaty, has fortified the additional protection of fundamental rights both at the level of Union institutions and within Member States in the application of EU law. By encompassing a broad spectrum of rights, the Charter has emerged as an important pillar for the development of unified European standards in the field of human right.

The analysis further demonstrates that the Charter has exerted a tangible influence on jurisprudence and legislative processes, rendering its implementation an indispensable aspect of the legal integration of Member States. Within this context, Montenegro's accession process serves as a good example for evaluating a state's capacity to comply with the Union's requirements concerning the rule of law and fundamental rights protection.

The EU Charter provides a clear legal framework that can serve as a guide for the further strengthening of human rights and fundamental freedoms in Montenegro and other candidate countries.

Consequently, the Charter not only embodies the shared values underpinning the European Union but also affirms the Union's commitment to establishing a legal space in which human rights are universal, indivisible, and effectively safeguarded. Full implementation of the Charter remains imperative for all current and prospective Member States, for the purpose of guaranteeing equality, dignity, and justice for all citizens. In this regard, the implementation of the Charter in Montenegro should be a strategic priority in both legislative and political actions.

Bibliography:

- Vukčević, M., & Ćupić, D. (2024). *Introduction to Human Rights* (2nd ed.). Faculty of Law, University of Donja Gorica.
- Vukčević, M. (2021). *Commentary on the Constitution of Montenegro* (2nd ed.). Association of Lawyers of Montenegro.
- Popović, N. (2008). Human Rights Policy of the European Union: Development and Challenges for the Future. *Political Thought*, 45(3–4), 161–185.
- European Commission. (2024). *Montenegro Report for 2024*.
- Weidenfeld, W., & Wessels, W. (Eds.). (2005). *Europe from A to Z – A Handbook for European Integration*. Konrad Adenauer Stiftung.

