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Baseline report on the possibilities of strengthening the situation of fundamental rights through increased use of the Charter of Fundamental Rights of the European Union – Slovakia

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SLOVAK NATIONAL
CENTRE FOR
HUMAN RIGHTS



Title: Baseline report on the possibilities of strengthening the situation of fundamental rights through increased use of the Charter of Fundamental Rights of the European Union – Slovakia

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The authors are responsible for the content and editing. The text has not undergone an expert review process.

Graphic design: Iveta Tatarková

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ISBN: **978-80-99917-78-2** (online)

978-80-99917-77-5 (print)

The project entitled “Supporting national human rights institutions in monitoring fundamental rights and the fundamental rights aspects of the rule of law” has received funding from Iceland, Liechtenstein and Norway through the EEA and Norway Grants Fund for Regional Cooperation in the amount of 194 982,50 €. The aim of the project is to strengthen the role of national human rights institutions and their capacity to engage in the processes of applying fundamental rights and principles of the rule of law within the EU mechanisms.



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List of abbreviations

CMP	Act No. 16/2015 Coll., the Civil Non-dispute Code, as amended
CSP	Act No. 160/2015 Coll., the Civil Procedure Code, as amended
ECHR	European Convention on Human Rights
EU	European Union
Charter	Charter of Fundamental Rights of the European Union
Legislative rules	Legislative Rules of Law making No. 19/1997 Coll.
Treaty of Lisbon	The Treaty of Lisbon amending the Treaty on the European Union and the Treaty establishing the European Community, signed in Lisbon on 13 December 2007
Supreme Administrative Court	Supreme Administrative Court of the Slovak Republic
Supreme Court	Supreme Court of the Slovak Republic
NRSR	National Council of the Slovak Republic
APC	Act No. 162/2015 Coll., the Administrative Procedure Code
Court of Justice of the European Union	Court of Justice of the European Union
Constitution	Constitution of the Slovak Republic
Constitutional Court of the Slovak Republic	Constitutional Court of the Slovak Republic
Act on the creation of legal regulations	Act No. 400/2015 Coll. on the Creation of Legal Regulations and on the Collection of Laws of the Slovak Republic
EU Treaty	Treaty on the European Union
EC Treaty	Treaty establishing the European Community

Introduction

The aim of this report is to provide an overview of the situation of fundamental rights at the national level, depending on how the Charter of Fundamental Rights of the European Union (“the Charter”) is used by the national authorities (legislative, executive and judiciary) or by other relevant actors. On the basis of the information gathered on the Charter, the potential role and added value of the Charter should be revealed in order to strengthen the situation of fundamental rights. The report also looks at good practices from other countries to provide inspiration for consolidating the situation of fundamental rights through the Charter.

The Charter can be regarded as the fundamental human rights charter of the European Union (“EU”). It is a modern human rights catalogue, containing a number of rights that are not enshrined in any other document of this nature.¹ In terms of structure, it contains fifty articles with substantive rights or principles and four articles with general provisions. EU Member States have a duty to promote the implementation of the Charter. The Charter has been part of the EU’s legal order since 2000.² With the adoption of the Treaty of Lisbon amending the Treaty on the European Union (“EU Treaty”) and the Treaty establishing the European Community (“EC Treaty”), signed in Lisbon on 13 December 2007 (“Lisbon Treaty”), the Charter became part of primary law by giving it the same legal force as

the basic Treaties.³ Pursuant to Article 6 (1) of the EU Treaty, “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”.⁴ On the basis of that article, the Charter was made legally binding as from 1 December 2009, when the Treaty of Lisbon entered into force.⁵

There are two fundamental sources of human rights in the EU legal system, the general unwritten principles of EU law and the Charter. Both of these sources are part of EU primary law, intertwined and applied in the application of EU law.⁶ According to the case law of the Court of Justice of the European Union (“CJEU”), these general principles include fundamental human rights, including those based on the European Convention on Human Rights (“ECHR”) and other fundamental principles of EU law, such as the principle of the protection of legitimate expectations or the principle of proportionality.⁷

Thus, in terms of the relationship between the Charter and the ECHR, the Charter also contains rights that are identical to those contained in the ECHR. In such a case, these rights provide a scope of protection at least as guaranteed by the ECHR. However, the Charter

1 HANDBOOK. Applying the Charter of Fundamental Rights of the European Union in law and policymaking at the national level, FRA, p.3, available in English at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-charter-guidance_en.pdf.

2 EU Charter of Fundamental Rights in Slovakia, FRA, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-eu-charter-in-slovakia_sk.pdf.

3 Penetration of the Charter of Fundamental Rights of the European Union into national law in the example of the Slovak Republic, in: ACTA UNIVERSITATIS CAROLINAE - IURIDICA 2, pp 9-10, available at: https://karolinum.cz/data/clanek/2882/lurid_2_2016_02_Mazak.pdf.

4 Article 6 of EU Treaty.

5 Lisbon Treaty, European Union Fact Sheets – 2023, European Parliament, p.3, available at: https://www.europarl.europa.eu/ftu/pdf/sk/FTU_1.15.pdf.

6 HANDBOOK. Applying the Charter of Fundamental Rights of the European Union in law and policymaking at the national level, FRA, available in English at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-charter-guidance_en.pdf.

7 Course: Charter e-guidance: Step by step guidance, FRA, available in English at: <https://e-learning.fra.europa.eu/course/view.php?id=78#-section-2>.

can also provide a broader scope of protection than the ECHR. This follows from Article 52 (3) of the Charter. In terms of EU law, the ECHR provides a minimum level of protection. Until the EU accedes to the ECHR, the ECHR cannot constitute a formal source of law incorporated into EU law. The ECHR can only be classified as a principle of EU law.⁸ The EU's accession to the ECHR is a legal obligation stemming from the Lisbon Treaty. Accession to the ECHR will mean that citizens will be able to challenge EU action in the European Court of Human Rights. The EU will also be able to join its Member States in proceedings before the European Court of Human Rights concerning alleged violations under EU law.⁹

Negotiations on the EU's accession to the ECHR started in 2010. In 2013, the then 47 member states of the Council of Europe and the EU reached the first preliminary accession agreement, which was declared incompatible with the EU Treaties by the EU Court of Justice.¹⁰ Negotiations were resumed in 2020 and the accession process reached an important milestone in March 2023 – negotiations at the technical level were concluded with the only remaining issue relating to the EU's Common Foreign and Security Policy to be dealt with internally.¹¹

The Charter itself distinguishes between two types of provisions, namely rights and principles (which are not to be confused with the general unwritten principles that are the

source of human rights in the EU). Both types of provisions are legally binding, the difference being that rights must be “respected” and the principles of the Charter should be “upheld”¹² According to the Charter, “the provisions of this Charter which contain principles may be implemented by legislative and executive acts adopted by the institutions, bodies, offices and agencies of the Union, and by acts of the Member States, when implementing Union law, in the exercise of their respective competences. They may be invoked before a court only for the purpose of interpreting and reviewing the legality of those acts.”¹³ Subjects can therefore directly invoke before the court only those provisions of the Charter that we classify as rights.

As the Charter forms part of the EU's primary law, it takes precedence over national law. It is important to note that this principle of primacy has a certain limitation based on Art. 51 of the Charter, according to which “the provisions of this Charter, while respecting the principle of subsidiarity, are addressed to the institutions, bodies, offices and agencies of the Union, as well as to the Member States, solely when they are implementing Union law. As a result, they respect rights, uphold principles and promote their application in accordance with their respective competences and while respecting the limits of the Union's powers conferred on it by the Treaties.”¹⁴ The Charter can therefore only be invoked before a court if the case falls within the scope of EU law.

8 HANDBOOK. Applying the Charter of Fundamental Rights of the European Union in law and policymaking at the national level, FRA, pp.22-23, available in English at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-charter-guidance_en.pdf.

9 EU's accession to the European Convention on Human Rights, European Commission, available in English at: https://ec.europa.eu/commission/presscorner/detail/en/statement_20_1748.

10 Opinion of the Court of Justice of the EU No. 2/13 of 18 December 2014.

11 Major progress on the path to EU accession to the ECHR: Negotiations concluded at the technical level in Strasbourg, Delegation of the European Union to the Council of Europe, available in English at: https://www.eeas.europa.eu/delegations/council-europe/major-progress-path-eu-accession-echr-negotiations-concluded-technical_en

12 HANDBOOK. Applying the Charter of Fundamental Rights of the European Union in law and policymaking at the national level, FRA, pp.20-21, available in English at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-charter-guidance_en.pdf.

13 Art. 52 (5) of the Charter.

14 Art. 51 (1) of the Charter.

Status of the Charter in the Slovak legal order

In accordance with the principle of priority enshrined in the aforementioned Article 51 of the Charter, the Charter prevails over the legal order of the Slovak Republic, including the Constitution of the Slovak Republic (“the Constitution”) and constitutional laws.¹⁵ The relationship between the Charter and the national laws of EU countries has also been addressed by the Court of Justice of the EU. The key decision in this case was *Åklagaren v Hans Åkerberg Fransson*, where the Court indicated that it would apply the expansive meaning of the phrase “where they are implementing Union law” as set out in Article 51 of the Charter.¹⁶ In this case, the Swedish national court asked the CJEU whether the “ne bis in idem” principle in Article 50 of the Charter should also apply to a case involving tax fraud. The CJEU found a legal link on the basis that penalties and prosecutions for this tax fraud were also imposed in the context of value added tax. Since value added tax, through the VAT Directive, is regulated by EU law and in conjunction with Art. 4 (3) of the EU Treaty, which defines the principle of sincere cooperation, Member States are obliged to take all necessary measures to levy it. In addition, Member States have an obligation to combat activities affecting the EU’s financial interests, and the CJEU has stated that the EU’s own resources include, in particular, revenue from the application of the uniform rate to the harmonised VAT assessment bases determined under EU rules. Tax penalties

and criminal proceedings, in this case as a result of inaccuracies in the VAT information provided, fell within the scope of EU law under Article 51 of the Charter.¹⁷

The CJEU affirmed this relationship in the *Melloni* decision, in which it ruled out the possibility for Member States to invoke a higher standard of national constitutional rights in the context of Art. 53 of the Charter where the effectiveness of EU law would be undermined.¹⁸ According to this decision, “national authorities may apply national standards of protection as long as such application does not compromise the level of protection resulting from the Charter, as interpreted by the Court of Justice, or the primacy, uniformity and effectiveness of Union law.”¹⁹

Furthermore, for the purposes of the application of the Charter in the Slovak legal order, the provisions of the Charter have direct effect, provided that the conditions set out in the case-law of the Court of Justice of the EU are met. The Charter should also be used in proceedings on the compatibility of legislation before the Constitutional Court of the Slovak Republic (“the Constitutional Court of the Slovak Republic”) as a basis for examining the compatibility of the impugned legislation. It should also apply in proceedings concerning complaints by natural or legal persons alleging infringement of their rights or freedoms. In addition to the above, gener-

15 Penetration of the Charter of Fundamental Rights of the European Union into national law in the example of the Slovak Republic, in: ACTA UNIVERSITATIS CAROLINAE - IURIDICA 2, pp 10-11, available at: https://karolinum.cz/data/clanek/2882/lurid_2_2016_02_Mazak.pdf.

16 Baranik, K., Interaction of international, supranational and constitutional law in the protection of human rights in the Slovak Republic, p. 1133 available at: https://www.academia.edu/35585347/Interakcia_medzin%C3%A1rodn%C3%A9ho_supranacion%C3%A1neho_a_%C3%BAstavn%C3%A9ho_pr%C3%A1va_pri_ochrane_%C4%BEudsk%C3%BDch_pr%C3%A1v_v_SR?email_work_card=view-paper.

17 Field of Application of the Charter of Fundamental Rights of the European Union, Fact sheet, Court of Justice of the European Union, pp. 3-4, available in English at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-05/fiche_thematique_-_charte_-_en.pdf

18 Baranik, K., Interaction of international, supranational and constitutional law in the protection of human rights in the Slovak Republic, p. 1133 available at: https://www.academia.edu/35585347/Interakcia_medzin%C3%A1rodn%C3%A9ho_supranacion%C3%A1neho_a_%C3%BAstavn%C3%A9ho_pr%C3%A1va_pri_ochrane_%C4%BEudsk%C3%BDch_pr%C3%A1v_v_SR?email_work_card=view-paper.

19 Judgment of the Court C-399/11 of 26 February 2013, Stefano Melloni v Ministero Fiscale, para 60, available at: <https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=CELEX:62011CJ0399&qid=1685623453799>.

ally binding legislation should be interpreted in accordance with the interpretation and application of the Charter. In this case, we

are talking about the so-called indirect effect of the Charter.²⁰

Charter and legislative activity

The Charter also performs a number of functions in the creation or amendment of laws. National law must be interpreted in accordance with the Charter, which is the interpretative function of the Charter. Another function is that of scrutiny, which means that the Charter, as well as the general legal principles, constitute the basic test for examining the constitutionality and legality not only of EU law, but also of laws, decisions and actions of national authorities. If these national laws, decisions and measures are not in conformity with the Charter, they must remain inapplicable, even if they would still be valid or effective.

The process of drafting legislation is regulated by Act No. 400/2015 Coll. on the Creation of Legal Regulations and on the Collection of Laws of the Slovak Republic (“Act on the Creation of Legal Regulations”). According to this law, the aim of lawmaking is to prepare, with the participation of the public, a piece of legislation that will become a functional part of a balanced, transparent and stable legal order of the Slovak Republic, compatible with EU law and the international legal obligations of the Slovak Republic. The balance of the legal order presupposes, among other things, that legislation is in line with EU law.²¹

Pursuant to Section 7(g) of the Legislation Act, draft legislation that is submitted for comment must contain, inter alia, a table of the draft legislation’s conformity with EU law when transposing or implementing a legally binding EU act.²² The bill is also accompanied by an explanatory memorandum, which is di-

vided into a general and a specific part. The general part must also include an assessment of the compatibility of the legislation with EU law.²³

More detailed rules for the preparation of laws are contained in the Legislative Rules for the Preparation of Laws No. 19/1997 Coll. (“Legislative Rules”). Under the legislative rules, the compatibility of a draft law with EU law is demonstrated by a clause on the compatibility of the draft law with EU law.²⁴ The clause on compatibility with EU law must indicate whether the subject matter of the bill is also covered by EU law. If so, the clause must identify the relevant obligations in relation to the EU and the extent to which the bill is compatible with EU law. In the case of partial or full non-compliance with EU law, the reasons, the expected date and the means to achieve full compliance must be stated.²⁵

It is important that the legal obligation to ensure compliance with EU law, in particular the Charter, is not only formally but also materially fulfilled when legislating. It appears that this is not in fact the case. An example is the process of adopting new civil law codes between 2014 and 2015.²⁶

One of these codes is Act No. 160/2015 Coll., the Civil Procedure Code, as amended (“CSP”). The compatibility clause states that the subject matter of the legislation is directly covered by Articles 7, 8, 47 of the Charter.²⁷ However, the general part of the Explanatory Memorandum contains only information on

21 Section 2 of the Legislation Act.

22 Ibid, Section 7 (1).

23 Ibid, Section 7 (2).

24 Art. 3 of the Legislative Rules.

25 Ibid, Annex 1.

26 Penetration of the Charter of Fundamental Rights of the European Union into national law in the example of the Slovak Republic, in: ACTA UNIVERSITATIS CAROLINAE – IURIDICA 2, p 12, available at: https://karolinum.cz/data/clanek/2882/lurid_2_2016_02_Mazak.pdf.

27 Clause on the compatibility of legislation with European Union law, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=408707>.

the reflection of Article 6 ECHR. The Charter is not even mentioned in it.²⁸ Similarly, the separate part of the Explanatory Memorandum makes no reference to the Charter, only to the ECHR.²⁹ Subsequently, the CSP was directly supplemented in 2017. This proposal “adds the right to submit submissions and evidence in one’s mother tongue, whereby the State – in respect of Bulgarian, Czech, Croatian, Hungarian, German, Polish, Romani, Ruthenian and Ukrainian, which were designated as regional or minority languages by the Slovak Republic upon ratification of the European Charter for Regional or Minority Languages – shall itself provide for the translation of such submissions and evidence.” The Charter is not mentioned in the explanatory memorandum, nor in the compatibility clause.³⁰ There was also a direct addition to the CSP in 2023, in order to enshrine the time limit for making an order for costs. The Charter was not mentioned in this case either.³¹

Another civil procedural code is Act No. 16/2015 Coll., the Civil Procedure Code, as amended (“CMP”). The compatibility clause also states that the subject matter of the legislation is directly covered by Articles 7, 8 and 47 of the Charter.³² The general part of the Explanatory Memorandum makes no reference to the Charter.³³ Similarly, the special section does not contain any reference to the Charter, but does contain references to the ECHR, the Convention on the Rights of the Child and

the UN Convention on the Rights of Persons with Disabilities.³⁴ Subsequently, the CMP was amended in 2019 to permit the filing of an action for retrial also against a final order in proceedings for the return of a minor to a foreign country in matters of wrongful removal or detention. The Charter was not mentioned either in the validity clause or in the explanatory memorandum.³⁵ Subsequently, the CMP was amended in 2021, in order to change the method of declaring the possession of the right of ownership of immovable property or the right corresponding to an easement. Nor was there any reference to the Charter.³⁶ In 2022, the CMP was amended twice. One of the amendments was to improve the position of persons with disabilities by strengthening the procedural powers of the Commissioner for Persons with Disabilities. In this case, there was also no reference to the Charter, only to the Convention on the Rights of Persons with Disabilities.³⁷ The next amendment will introduce a number of changes to strengthen the position of minors. The compatibility clause refers to Art. 47 of the Charter.³⁸ However, the explanatory memorandum (both general and specific) no longer mentions the Charter.³⁹

Another procedural law that has been adopted is Act No. 162/2015 Coll., the Administrative Procedure Code (“APC”). As with previous legislation, the Charter was referred to in the compatibility clause when the legislation was drafted, but the reference was not further

28 Explanatory Memorandum, General Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=408704>

29 Explanatory Memorandum, Special Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=408705>.

30 Explanatory Memorandum, General Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=43391>.

31 Explanatory Memorandum, General Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=524662>.

32 Clause on the compatibility of legislation with European Union law, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=408725>.

33 Explanatory Memorandum, General Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=408722>.

34 Explanatory Memorandum, Special Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=408723>.

35 Explanatory Memorandum, General Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=461516> and Clause on the compatibility of the legislation with European Union law, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=461518>.

36 Explanatory Memorandum, General Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=487112>

37 Explanatory Memorandum, General Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=512688>.

38 Explanatory Memorandum, General Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=512688>.

39 Explanatory Memorandum, General Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=512626> and Explanatory Memorandum, Special Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=512627>

made in the Explanatory Memorandum.⁴⁰ A specific part of the reasoned report contained a reference to the ECHR.⁴¹ This legislation has

gone through three direct amendments, none of which referred to the Charter.⁴²

40 Explanatory Memorandum, General Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=408731> and Details of the Draft Law, Government Draft Law Administrative Procedure Code, National Council of the Slovak Republic, available at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=5282>.

41 Explanatory Memorandum, Special Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=408732>.

42 Amendments: Explanatory Memorandum, General Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=515627>, Explanatory Memorandum, General Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=524931> and Explanatory Memorandum, General Part, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=433914>.

State policies that refer to the Charter and examples of legal practice

Government policies that promote the use and awareness of the Charter among legislators, the administration, law enforcement and the judiciary are published on the official EU portal⁴³. The list of policies on this portal as examples of good practice, which include a reference to the Charter, was provided by the Slovak Republic:

Policy title	Link to the Charter
Action Plan to Prevent All Forms of Discrimination 2016-2019	It is intended to refer to the Charter and integrate it into the basic anti-discrimination legal framework in relation to the international context. ⁴⁴
National Strategy for Gender Equality in the Slovak Republic 2014-2019 ⁴⁵	As part of its international commitments, the Strategy refers to the principle of equality between men and women in Article 23 and the principle of non-discrimination in Article 21 of the Charter.
Strategy of Labour Mobility of Foreigners in the Slovak Republic ⁴⁶	In its funding options, the Strategy refers to the Asylum, Migration and Integration Fund 2014-2020, whose objectives are implemented respecting the rights and principles enshrined in the Charter.
National Strategy for the Protection of Children's Rights Against Violence ⁴⁷	Within the European child protection system, the Strategy refers to the promotion and protection of children as one of the EU's objectives emphasised in particular by Art. 3 (3) of the Lisbon Treaty and Art. 24 of the Charter.

43 Member States' best practices on the Charter, European Commission, available in English at: https://e-justice.europa.eu/37134/EN/member_states_best_practices_on_the_charter.

44 Information provided by the Slovak Republic via its website – the link to the strategy is broken and cannot be found online

45 National Strategy for Gender Equality in the Slovak Republic for 2014-2019, Ministry of Labour, Social Affairs and Family of the Slovak Republic, available at: https://www.gender.gov.sk/wp-content/uploads/2014/11/Strategia-RR_final.pdf

46 Strategy of Labour Mobility of Foreigners in the Slovak Republic, Ministry of Labour, Social Affairs and Family of the Slovak Republic, available at: https://www.slov-lex.sk/legislativne-procesy?p_p_id=processDetail_WAR_portletset&p_p_lifecycle=2&p_p_state=normal&p_p_mode=view&p_p_cacheability=cacheLevelPage&p_p_col_id=column-2&p_p_col_count=1&_processDetail_WAR_portletset_fileCooodr=COO.2145.1000.3.2964016&_processDetail_WAR_portletset_file=04_vlastny-materi%C3%A1l.docx&_processDetail_WAR_portletset_action=getFile.

47 National Strategy for the Protection of Children's Rights against Violence, Ministry of Labour, Social Affairs and Family of the Slovak Republic, available at: https://detstvobeznasiilia.gov.sk/web_data/content/upload/subsubsub/1/2019-aktualizacia-narodnej-strategie-na-ochranu-deti-pred-nasilim-1.pdf.

National Programme for the Development of the Living Conditions of Persons with Disabilities 2014-2020 ⁴⁸	The Strategy declares at the outset that the EU has recognised the rights of people with disabilities in the Charter.
National Programme for Active Ageing 2014-2020 ⁴⁹	The National Programme refers to the Charter in its foundations.
National priorities for the development of social services for 2015-2020 ⁵⁰	The material refers to the Charter as one of the international documents on which the material is based.
Strategy for the deinstitutionalisation of the system of social services and foster care in the Slovak Republic ⁵¹	As a general starting point, the paper refers to the European Disability Strategy 2010-2020, which „draws attention“ to the Charter’s commitments.
National concept for the protection of children in digital space ⁵²	The Charter (Art. 24) is mentioned within the international context of child protection in the digital space.

In the above-mentioned materials, the reference to the Charter is of a rather formal nature, as a source of law, without a deeper analysis of the obligations arising from this document. These state listed documents are not fully up to date, therefore they can be supplemented:

Policy title	Link to the Charter
National Strategy for the Protection and Promotion of Human Rights in the Slovak Republic ⁵³	Unlimited document from 2014. It contains no reference to the Charter.

48 National Programme for the Development of Living Conditions of Persons with Disabilities 2014-2020, Ministry of Labour, Social Affairs and Family of the Slovak Republic, available at: <https://www.employment.gov.sk/files/slovensky/rodina-socialna-pomoc/tazke-zdravotne-postihnute/narodny-program-rozvoja-zivotnych-podmienok-osob-so-zdravotnym-postihnutim-roky-2014-2020.pdf>.

49 National Programme on Active Ageing 2014-2020, Ministry of Labour, Social Affairs and Family of the Slovak Republic, available at: https://www.minv.sk/swift_data/source/rozvoj_obcianskej_spolocnosti/rada_vlady_pre_mno/rokovania/2013/5_rokovanie/MPSVR_narodny-program-aktivneho-starnutia_material.pdf.

50 National Priorities for the Development of Social Services for 2015-2020, Ministry of Labour, Social Affairs and Family of the Slovak Republic, available at: <https://www.employment.gov.sk/files/slovensky/rodina-socialna-pomoc/socialne-sluzby/nprss-2015-2020.pdf>.

51 Strategy for the deinstitutionalisation of the system of social services and foster care in the Slovak Republic, Ministry of Labour, Social Affairs and Family of the Slovak Republic, available at: <https://www.employment.gov.sk/files/legislativa/dokumenty-zoznamy-pod/strategia-deinstitucionalizacie-systemu-socialnych-sluzieb-nahradnej-starostlivosti-1.pdf>

52 National Concept of Child Protection in the Digital Space, Ministry of Labour, Social Affairs and Family of the Slovak Republic, available at: https://www.slov-lex.sk/legislativne-procesy?p_p_id=processDetail_WAR_portletset&p_p_lifecycle=2&p_p_state=normal&p_p_mode=view&p_p_cacheability=cacheLevelPage&p_p_col_id=column-2&p_p_col_count=1&_processDetail_WAR_portletset_fileCooaddr=OOO.2145.1000.3.3769645&_processDetail_WAR_portletset_file=4.-vlastn%C3%BD-materi%C3%A1l-1.docx&_processDetail_WAR_portletset_action=getFile.

53 National Strategy for the Protection and Promotion of Human Rights in the Slovak Republic, Ministry of Justice of the Slovak Republic, available at: <https://www.minedu.sk/data/att/14484.pdf>

National Strategy for Equality between Women and Men and Equal Opportunities in the Slovak Republic for 2021 – 2027 ⁵⁴	The document contains a number of references to the Charter. The Charter is listed under political commitments as a legal document that has the same legal force as the EU's basic treaties.
Gender Equality and Equal Opportunities Action Plan 2021-2027 ⁵⁵	Implementation document of the National Strategy for Equality between Women and Men and Equal Opportunities in the Slovak Republic for 2021-2027 in the form of specific tasks. It does not refer to the Charter (but neither to any other source; it only specifies the strategy)
National Action Plan for the Prevention and Elimination of Violence against Women 2022-2027 ⁵⁶	It refers to the Charter as the source of Slovakia's international obligations in the field of violence prevention and the protection of victims of violence.
National Action Plan for Women's Employment 2022-2030 ⁵⁷	No reference to the Charter.
Roma Equality, Inclusion and Participation Strategy 2030 ⁵⁸	No reference to the Charter.
National Programme for the Development of the Living Conditions of Persons with Disabilities 2021-2030 ⁵⁹	The introduction contains a reference to Art. 26 of the Charter.
National Programme for Active Ageing 2021-2030 ⁶⁰	Reference is made in the introduction to the Charter, according to which this material can be considered as one of the programmatic platforms for the fulfilment of international commitments, including the Charter.

54 National Strategy for Equality between Women and Men and Equal Opportunities in the Slovak Republic for 2021-2027, Ministry of Labour, Social Affairs and Family of the Slovak Republic, available at: <https://www.employment.gov.sk/files/sk/ministerstvo/spolocny-sekretariat-vyborov/vybor-rodovu-rovnost/dokumenty-udalosti/strategia-rovnosti-z-m-2021-27.pdf>

55 Action Plan for Gender Equality and Equal Opportunities 2021-202, Ministry of Labour, Social Affairs and Family of the Slovak Republic, available at: <https://www.employment.gov.sk/files/sk/ministerstvo/spolocny-sekretariat-vyborov/vybor-rodovu-rovnost/dokumenty-udalosti/ap-rovnosti-zien-muzov-rovnosti-prilezitosti-2021-27.pdf>

56 National Action Plan for the Prevention and Elimination of Violence against Women 2022-2027, Ministry of Labour, Social Affairs and Family of the Slovak Republic, available at: <https://www.employment.gov.sk/files/sk/ministerstvo/spolocny-sekretariat-vyborov/vybor-rodovu-rovnost/dokumenty-udalosti/nap-eliminacia-nasilia-zenach.pdf>

57 National Action Plan for Women's Employment 2022-2030, Ministry of Labour, Social Affairs and Family of the Slovak Republic, available at: https://www.employment.gov.sk/files/sk/ministerstvo/spolocny-sekretariat-vyborov/vybor-rodovu-rovnost/dokumenty-udalosti/nap-zam-estnanosti_zien_22-30.pdf

58 Roma Equality, Inclusion and Participation Strategy 2030, Office of the Government Plenipotentiary for Roma Communities, available at: https://www.romovia.vlada.gov.sk/site/assets/files/1113/strategia_2030.pdf?csrt=13100578895519930629

59 National Programme for the Development of Living Conditions of Persons with Disabilities for 2021-2030, Ministry of Labour, Social Affairs and Family of the Slovak Republic, available at: https://www.komisarprezdravotnepostihnuty.ch.sk/getmedia/f5d309c8-6eaa-48f9-b590-ef7d-776ddf77/Material_NPRZPOZP_2021-2030.aspx

60 National Programme on Active Ageing 2021-2030, Ministry of Labour, Social Affairs and Family of the Slovak Republic, available at: <https://www.nocka.sk/narodny-program-aktivneho-starnutia-na-roky-2021-2030/>

National priorities for the development of social services for 2021-2030⁶¹

The Charter is listed in the human rights context section as a source of international obligations.

It can be perceived that, even in current state policies, the Charter is only mentioned as a certain starting point or source of legislation (at best with a reference to a specific article). The field of European and international law also forms the content of the training of judges and the preparatory training of candidates for office provided by the Judicial Academy of the Slovak Republic (“the Judicial Academy”). Within this area, the focus is on the protection of human rights in the EU, specifically the Charter and its application in practice (case study of the CJEU).⁶² In 2023, the Judicial Academy also provided an educational event entitled: Preliminary Proceedings and the Application of the EU Charter of Fundamental Rights in the Recent Case Law of the Court of Justice. The educational event focused on “the obligations of the courts of the Member States in the application of Union law, the subject matter of preliminary rulings, the preliminary ruling procedure, the scope of the binding nature of the Charter, the rules of interpretation of the rights, freedoms and principles enshrined in the Charter, the relationship be-

tween the Charter and the European Convention for the Protection of Human Rights and Fundamental Freedoms, the recent case-law of the Court of Justice, case-law searches, and the resolution of cases”⁶³ This is the only educational event in the last five years with the Charter as its content.⁶⁴

EU law forms one of the question headings in the bar exam. Passing the bar examination is one of the prerequisites for practising as a lawyer in Slovakia.⁶⁵ There are 132 questions on EU law, of which five are on the Charter. These questions concern the application of the Charter, the content and nature of the Charter and its relationship to the ECHR.⁶⁶ In addition to the test, the bar exam consists of written assignments and an oral part. The written assignments consist of civil law; commercial law and criminal law and are not accessible.⁶⁷ EU law is also one of the topics for the oral part of the exam. But none of the questions are specifically directed at the Charter.⁶⁸

61 National Priorities for the Development of Social Services for 2021-2030, Ministry of Labour, Social Affairs and Family of the Slovak Republic, available at: <https://www.employment.gov.sk/files/slovensky/rodina-socialna-pomoc/socialne-sluzby/nprss-fin.pdf>.

62 Content of judicial education and preparatory education of candidates for judicial office, Judicial Academy, p.5, available at: https://ja-sr.sk/sites/default/files/2020-12/Obsahova_napl_n_schvalena_Sudnou_radou_25_09_2017.pdf.

63 Curriculum for 2023, Judicial Academy, available at: https://ja-sr.sk/sites/default/files/SP_2023_schvaleny_final_0.pdf.

64 Previous judicial education curricula are available in the curriculum archive at: <https://ja-sr.sk/archiv-studijnych-planov-kalendar-vzdelavacich-podujati>

65 Section 3 (1) of Act No. 586/2003 Coll. No. 465/1991 Coll. on Trade Licensing (Trade Licensing Act), as amended

66 Questions for the test: European Union Law, Slovak Bar Association, available at: <https://shorturl.at/dNUV2>

67 Written Tasks, Slovak Bar Association, available at: https://www.sak.sk/web/sk/cms/document/252/advokatska_skuska/pisomne_ulohy

68 Questions for the oral part, Slovak Bar Association, available at: https://www.sak.sk/web/sk/cms/document/252/advokatska_skuska/otazky_ustne

Charter and case law of the courts of the Slovak Republic

Joining the EU, the Slovak Republic assumed its obligations under EU law, legally binding EU acts became part of the Slovak legal order, and courts and public authorities became

obliged to ensure the full and effective effect of EU law on Slovak territory.

Case law of the Constitutional Court of the Slovak Republic

The Constitutional Court of the Slovak Republic is obliged to take into account the requirement of a Euro-compatible interpretation of legal norms for the purpose of the effective and full effect of EU law. The Constitutional Court sees this requirement as a requirement enshrined in the Constitution to recognise and respect the general rules of international law, international treaties and other international obligations to which the Slovak Republic is bound under Art. 1 (2) of the Constitution.⁶⁹

The application of the Charter is also analysed by the Constitutional Court of the Slovak Republic. In its 2011 decision PL. ÚS 3/09⁷⁰, the Constitutional Court of the Slovak Republic commented for the first time on the issue of the compatibility of the provisions of the Act with EU law. In this case, the applicants contested the incompatibility with the EU Treaty of the provisions of Act No 581/2004 on Health Insurance Companies, Supervision of Health Care, and on Amendments and Additions to Certain Acts, as amended. In this decision, the Constitutional Court of the Slovak Republic stated that it is entitled to examine the compatibility of a national law with the provisions of the EU Treaty, which by its nature fulfils the defining features of an

international treaty referred to in Art. 125 (1) in conjunction with Art. 7 (2) of the Constitution.⁷¹ In addition to the above, the Constitutional Court of the Slovak Republic noted an important aspect concerning the initiation of this type of proceedings by authorized entities. According to the decision, this type of proceedings before the Constitutional Court of the Slovak Republic cannot be initiated by the general court, which “in the opinion of the Constitutional Court, cannot initiate proceedings before the Constitutional Court on the conformity of a national legal regulation with an international treaty by which the Slovak Republic has transferred the exercise of part of its rights to the European Union, in accordance with Art. 125 (1) of the Constitution, because it applies the provisions of European Union law within the scope of its jurisdiction”... and is obliged to ensure the full effect of those rules and shall not apply ex officio any national provision, even if it is a later provision, which is contrary to Community law, without first having to request or await its repeal by legislative or other constitutional procedure.”⁷²

In 2014, the Constitutional Court of the Slovak Republic ruled in the case PL. ÚS 105/2011, where, among other things, it also assessed

69 Macejková, I., Law of the European Union in the decision-making activity of the Constitutional Court of the Slovak Republic, available at: https://www.ustavnysud.sk/documents/10182/992164/Prispevok_UPJS_predsednicka.pdf/c9dc76d9-938c-45a2-9be7-1945d9eebcbf.

70 Decision Case No. PL. ÚS 3/09 of 26 January 2011.

71 Macejková, I., Law of the European Union in the decision-making activity of the Constitutional Court of the Slovak Republic, available at: https://www.ustavnysud.sk/documents/10182/992164/Prispevok_UPJS_predsednicka.pdf/c9dc76d9-938c-45a2-9be7-1945d9eebcbf.

72 Decision Case No. PL. ÚS 3/09 of 26 January 2011.

the compatibility of the provisions of several laws⁷³ with the articles of the Charter. The provisions challenged in this case concerned the publication of decisions of law enforcement authorities on the internet and the publicity of the selection procedure for the post of public prosecutor.⁷⁴ In the present case, the Court found that the impugned provisions were not contrary to the ECHR and, consequently, that they were not contrary to the Charter either, “in view of the equivalence of the scope and meaning of the Charter rights with the scope and meaning of the Convention rights,” which is apparent from Art. 52 (3) of the Charter.⁷⁵ It can be seen that in that case the Constitutional Court of the Slovak Republic did not directly apply the Charter and limited the scope of its assessment to stating that the absence of non-compliance with the ECHR means compliance with the Charter.

The Constitutional Court of the Slovak Republic also commented on the Charter in its decision PL. ÚS 10/2014 of 2015. Also in this case, the Constitutional Court of the Slovak Republic assessed the compatibility of the contested provisions of several laws⁷⁶ with the EU Charter. The contested provisions allowed for the preventive blanket retention of data on electronic communications. In this decision, the Constitutional Court of the Slovak Republic also dealt with the question of the applicability of the Charter itself in the Slovak legal order.⁷⁷ According to the Constitutional Court of the Slovak Republic, “although the Charter was not adopted in the form of an international

al treaty, with the entry into force of the Treaty of Lisbon it became a legally binding part of the primary law of the European Union with the same legal force as the treaties on which the Union is founded. The status of the treaties on which the Union is based in the legal order of the Slovak Republic is regulated by Art. 1 (2) of the Constitution and Art. 7 (5) of the Constitution. Article 1 (2) of the Constitution provides for the Slovak Republic’s obligation to recognise and observe the general rules of international law, the international treaties by which it is bound, as well as its other international obligations... The Charter, which has the same legal force as the treaties on which the Union is based, should therefore be accorded the same status in the constitutional order of the Slovak Republic as that accorded to the above-mentioned categories of international treaties in Art. 7 (5) of the Constitution. In particular, the Charter should be accorded the status in the constitutional order of the Slovak Republic that international treaties on human rights and fundamental freedoms have under Art. 7 (5) of the Constitution.”⁷⁸ International treaties governed by Art. 7 (5) of the Constitution take precedence over laws.

As regards the question of the assessment of the incompatibility of the contested provisions with the Charter, the Constitutional Court of the Slovak Republic adopted a self-limiting approach and did not grant the application.⁷⁹ It justified this by referring to its previous case-law, according to which “where, in proceedings under Art. 125 (1)(a) of the

73 Act No. 153/2001 Coll. on the Public Prosecutor’s Office, as amended, Act No. 154/2001 Coll. on Public Prosecutors and Legal Aides to the Public Prosecutor’s Office, as amended, and Act No. 211/2000 Coll. on Free Access to Information, and on Amendments and Additions to Certain Acts, as amended.

74 Macejková, I., Law of the European Union in the decision-making activity of the Constitutional Court of the Slovak Republic, available at: https://www.uslavnsud.sk/documents/10182/992164/Prispevok_UPJS_predsednicka.pdf/c9dc76d9-938c-45a2-9be7-1945d9eecb0f.

75 Ruling of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS 105/2011 of 7 May 2014.

76 Act No. 351/2011 Coll. on Electronic Communications, as amended, the Criminal Procedure Code and Act of the National Council of the Slovak Republic No. 171/1993 Coll. on the Police Force, as amended

77 Macejková, I., Law of the European Union in the decision-making activity of the Constitutional Court of the Slovak Republic, available at: https://www.uslavnsud.sk/documents/10182/992164/Prispevok_UPJS_predsednicka.pdf/c9dc76d9-938c-45a2-9be7-1945d9eecb0f.

78 Ruling of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS 10/2014 of 29 April 2015.

79 Macejková, I., Law of the European Union in the decision-making activity of the Constitutional Court of the Slovak Republic, available at: https://www.uslavnsud.sk/documents/10182/992164/Prispevok_UPJS_predsednicka.pdf/c9dc76d9-938c-45a2-9be7-1945d9eecb0f.

Constitution, the Constitutional Court finds and decides that the contested law, part of it or some of its provisions are incompatible with the Constitution or a constitutional law, it is no longer necessary, in principle, to examine their incompatibility with European Union law (despite the fact that the appellants propose to do so), since their possible incompatibility would lead only to the same result and the same legal effects as those obtained by a decision according to which the contested legislation is incompatible with the Constitution or a constitutional law.⁸⁰

The Charter was subsequently dealt with by the Constitutional Court of the Slovak Republic in case No. PL. ÚS 2/2016. The Public Defender of Rights and the Attorney General of the Slovak Republic, as petitioners, sought a declaration of incompatibility of the contested provisions of the Act on the Conditions of Exercise of the Right to Vote⁸¹ (the provisions concerned the impediment to the right to vote during the execution of a prison sentence imposed for a particularly serious crime and the impediment to the right to vote consisting of the deprivation of legal capacity) with the relevant provisions of the Constitution, the Additional Protocol to the ECHR, the International Covenant on Civil and Political Rights, the Convention on the Rights of Persons with Disabilities, and the Charter of the Republic of Slovakia. Only the Attorney General objected to non-compliance with the Charter.⁸²

The Constitutional Court of the Slovak Republic specifically addressed both obstacles from the perspective of the elections to

the National Council of the Slovak Republic (“NCSR”), the elections to the European Parliament and the election of the President of the Slovak Republic. In relation to the elections to the European Parliament, the Court of First Instance ruled that the elections to the European Parliament were incompatible with the Constitution, the Additional Protocol to the ECHR, the International Covenant on Civil and Political Rights and, lastly, the Charter, in particular Art. 39 (2) of the Charter on elections.⁸³

According to the previous jurisprudence of the Constitutional Court of the Slovak Republic, the Constitutional Court would be required to justify the declaration of non-compliance with the Charter, since on the basis of the established doctrine of the so-called self-limiting approach, the Constitutional Court of the Slovak Republic, after declaring non-compliance with the Constitution, should no longer deal with the issue of compliance with the Charter. The Constitutional Court adopted the same procedure in the case of the obstacle to the right to vote consisting of the deprivation of the right to vote. In both cases, with no explanation as to why there is no self-limiting approach.⁸⁴

A decision in which the Constitutional Court of the Slovak Republic more comprehensively analysed the application of the Charter is the decision PL. ÚS 25/2019-117, which concerned the abstract review of constitutionality. In its abstract review of constitutionality, the Constitutional Court conducts its review according to several frameworks of reference,

80 Penetration of the Charter of Fundamental Rights of the European Union into national law in the example of the Slovak Republic, in: ACTA UNIVERSITATIS CAROLINAE – IURIDICA 2, p 13, available at: https://karolinum.cz/data/clanek/2882/lurid_2_2016_02_Mazak.pdf.

81 Act No. 180/2014 Coll. on the Conditions of Exercising the Right to Vote, and on Amendments and Additions to Certain Other Acts, as amended.

82 Jánošíková, M., The Charter of Fundamental Rights and Overcoming the Self-limiting Approach of the Constitutional Court of the Slovak Republic in Proceedings on the Compatibility of Legislation, in: ACTA UNIVERSITATIS CAROLINAE – IURIDICA 4, pp.83-84, available at: https://karolinum.cz/data/clanek/6408/lurid_64_4_0079.pdf.

83 Ruling of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS 2/2016 of 22 March 2017.

84 Jánošíková, M., The Charter of Fundamental Rights and Overcoming the Self-limiting Approach of the Constitutional Court of the Slovak Republic in Proceedings on the Compatibility of Legislation, in: ACTA UNIVERSITATIS CAROLINAE – IURIDICA 4, p.86, available at: https://karolinum.cz/data/clanek/6408/lurid_64_4_0079.pdf.

including the Charter. The choice of these frames of reference is at the proponent's discretion. In this type of procedure, EU law can have an impact on the subject matter of the review as well as on the frame of reference, which means that EU law is applied to establish what rules make up the law under review, but also to determine the content of the frame of reference with which compliance is being examined.⁸⁵

The examination procedure depends on whether the legislation under examination is non-harmonised, incompletely harmonised or fully harmonised with EU law. Assuming that the legislation is not harmonised, the Constitutional Court of the Slovak Republic, in the case of a plurality of reference frameworks and conformity of the identified rights, primarily examines compliance with the Constitution and possibly also compliance with the ECHR or another reference standard. The Charter is in principle not applied in these cases, but the jurisprudence on the Charter is still present as a possible source of interpretative enrichment in the context of international law.⁸⁶

If a legal norm is incompletely harmonised, the Constitutional Court of the Slovak Republic first examines its compatibility with the Constitution. The case law on other reference norms, in particular the ECHR and the Charter, remains ever present as a source of enrichment of interpretation and determination of the scope of the Slovak legislator's discretion. Consequently, three situations can occur:

- Interpretation of national norms in the light of EU law admits their compliance with the Constitution - in this case, the Constitutional Court of the Slovak Republic performs a constitutional-conformational interpretation from the interpre-

tative possibilities provided by EU law. In a subsequent step, it will also examine their compatibility with the Charter, if explicitly requested by the claimant, specifically examining the scope of its applicability and, where applicable, the impact on the principles of EU law, if there is any doubt as to whether they have been complied with.

- Interpretation of national norms that incorrectly implement EU law from a European and constitutional point of view does not allow their compliance with the Constitution – the Constitutional Court of the Slovak Republic finds a violation in this case and the legislator has to ensure the remedy in accordance with EU law and the Constitution. According to the Constitutional Court of the Slovak Republic, however, compliance with the Charter as an explicit reference norm does not need to be examined in this case. This is based on previous case law (PL. ÚS 3/09, PL. ÚS 10/2014).

- Interpretation of national norms in the light of EU law does not allow their compliance with the Constitution, while there is doubt about the validity of EU law - in this case, the Constitutional Court of the Slovak Republic will turn to the Court of Justice of the EU for a review of validity under Art. 267 of the EU Treaty. The Constitutional Court of the Slovak Republic will express its doubts in a petition to the Court of Justice of the EU with regard to the reference framework of the Charter.⁸⁷

If the legal norm under consideration is fully harmonised with EU law, the Constitutional Court of the Slovak Republic, in the case of a plurality of reference frameworks, will first of all examine their compatibility with the Charter, since common legislation created within

85 Ruling of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS 25/2019-117 of 10 November 2021.

86 Ibid.

87 Ruling of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS 25/2019-117 of 10 November 2021.

the framework of the devolved exercise of rights must be measured primarily according to the common catalogue of human rights. Full harmonisation in a certain area means that EU law does not give the Slovak legislator any discretion in the matter.⁸⁸

The most recent case law is from 2021. The last decision where the Charter was challenged was the decision in Case No. II. ÚS 367/2021⁸⁹ and concerned the presumption of innocence when deciding on detention. In this decision, the Constitutional Court of the Slovak Republic, in the part of the decision that focused on the right to a fair trial, stated that the Charter had not been violated as

the ECHR had not been violated. The applicant sought a declaration of non-compliance with Art. 47 (2) of the Charter, which provides for the right to a fair trial. The Constitutional Court of the Slovak Republic stated that this right is identical to Art. 6 (1) of the ECHR, and, according to the constant jurisprudence of the Constitutional Court of the Slovak Republic, proceedings in which detention is decided (as in the present case) do not fall under the proceedings on charges, nor proceedings on rights or obligations of a civil nature, to which the said Article of the ECHR applies, and therefore, on the basis of Article 52 (3) of the Charter, there is also no violation of the Charter.⁹⁰

Charter and case law within the court system of the Slovak Republic

The court system of the Slovak Republic consists of courts of general jurisdiction – district courts, regional courts, the Specialized Criminal Court, and the Supreme Court of the Slovak Republic (“Supreme Court”) and courts of administrative jurisdiction – administrative courts and the Supreme Administrative Court of the Slovak Republic (“Supreme Administrative Court”).⁹¹

As a source of rights, the Charter can be found in the decisions of courts of all instances in cases of a different nature. It is important to note that there is no search tool that can be used to filter out decisions of Slovak courts that refer to the Charter with respect to a particular article. It is possible to use a full-text search of the database of decisions, but

if one enters “EU Charter of Fundamental Rights” as a keyword, the system comes up with 9,681 results.⁹² Moreover, it is not possible to determine which of the decisions contains only a formal reference to the Charter and which actually refers to the Charter with adequate reasoning. Therefore, it is possible to give selected decisions based on professional publications. Decisions of the general courts concern, for example, consumer protection.⁹³ In the decision of the Regional Court in Prešov, Case No. 7Co/134/2012, it was stated, on the basis of Art. 38 of the Charter, according to which the policies of the states are to ensure a high standard of consumer protection, that if a credit supplier grants credit to a consumer without properly ascertaining the extent of the consumer’s obligations, the exercise of the

88 Ibid.

89 Ruling of the Constitutional Court of the Slovak Republic, Case No. II. ÚS 367/2021 of 16 December 2021.

90 Ruling of the Constitutional Court of the Slovak Republic, Case No. II. ÚS 367/2021 of 16 December 2021.

91 Section 5 of the Courts Act 757/2004 Coll. on Courts, and on Amendments and Additions to Certain Acts.

92 Search as of 26 June 2023, available at: <https://obcanjustice.sk/infosud/-/infosud/zoznam/rozhodnutie?ftq=Charta+z%C3%A1kladn%C3%BDch+pr%C3%A1v+E%C3%9A>.

93 Straka, P., Application of the Charter of Fundamental Rights of the European Union in Court Decisions, in: The Charter of Fundamental Rights of the European Union in judicial and other legal practice: First Decisions, Problems, Evaluations, 2015, Faculty of Law, UPJŠ in Košice, p. 75.

rights of that supplier is contrary to good morals. Providing money in return for payment to persons in distress who are clearly unable to repay a loan is contrary to the requirement of professional diligence.⁹⁴

Next, the county courts addressed the Charter in asylum proceedings. In the context of asylum proceedings, Bratislava Regional Court examined whether there was a violation of Art. 4 of the Charter, which provides for the prohibition of torture and other inhuman treatment, in Hungary. In those proceedings, the court annulled the decision of the Migration Board, which had rejected the asylum application on the ground that another Member State (Hungary) had jurisdiction.⁹⁵ “In the court’s view, the Migration Board was under a duty, particularly where the petitioner requested it ... to examine whether the treatment described by the applicant was merely an isolated excess, or whether such treatment of asylum seekers in Hungary could be (is) common in recent times, or whether such treatment of asylum seekers in Hungary amounts to inhumane or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union. Where the defendant failed to do so, the court characterized his failure to do so as an inadequate discovery.”⁹⁶ According to that decision, the Migration Board should therefore have examined whether the proceedings in the other State were contrary to the Charter and taken that into account in the asylum procedure.

The Regional Court in Bratislava has also ruled on the basis of the Charter in relation to health care. The applicant argued that the health

insurer’s decision to refuse reimbursement was contrary to Art. 35 of the Charter.⁹⁷ The Court does not accept the applicant’s claim that there has been a violation of Art. 40 of the Constitution of the Slovak Republic and Art. 35 of the Charter of Fundamental Rights of the EU. The protection of the fundamental right to free health care at the expense of health insurance is linked to a formal condition of the law.⁹⁸ The Regional Court in Bratislava did not uphold the applicant’s claim because the scope of protection of the fundamental right to free care at the expense of health insurance is governed by national law.

The Supreme Court deals with the Charter mainly in proceedings concerning consumer protection, asylum, health protection, as well as some family law cases.⁹⁹ The Charter was addressed by the Supreme Court in its decision Case No. 10Sžs/11/2011. In the present case, the applicant, a Turkish national, challenged, *inter alia*, Art. 15 of the Charter, which regulates the free choice of profession and the right to work, since the cancellation of his residence permit in the territory of the Slovak Republic led to the termination of the employment relationship which he had. In this case, however, the Supreme Court did not find a violation of the Charter, reasoning that the applicant could have applied for a work permit. In case No. 2Sžs/5ú2014, the Supreme Court upheld the decision of a lower court that dismissed actions for review of administrative decisions not to allow same-sex fiancés to marry. According to the Supreme Court, Art. 9 of the Charter regulates the right to marry and found a family by direct reference to national law and, therefore, that right

94 Judgment of Prešov Regional Court, Case No. 7Co/134/2012 of 24 January 2013.

95 Mazák, J., *The Charter of Fundamental Rights of the European Union in proceedings before the judicial protection bodies in the Slovak Republic*, Košice: Pavol Jozef Šafárik University in Košice, 2016, p. 213.

96 Judgment of the Regional Court Bratislava, Case No. 9Saz/10/2014 of 4 June 2014.

97 Mazák, J., *The Charter of Fundamental Rights of the European Union in proceedings before the judicial protection bodies in the Slovak Republic*, Košice: Pavol Jozef Šafárik University in Košice, 2016, pp. 214-205.

98 Resolution of Bratislava Regional Court, Case No. 5S/67/2015, of 28 March 2017.

99 Penetration of the Charter of Fundamental Rights of the European Union into national law in the example of the Slovak Republic, in: ACTA UNIVERSITATIS CAROLINAE – IURIDICA 2, p 15, available at: https://karolinum.cz/data/clanek/2882/lurid_2_2016_02_Mazak.pdf.

is to be interpreted in accordance with national law.¹⁰⁰ The Supreme Court also makes use of decisions of the CJEU in which the Charter has been argued. In the reasoning of the decision, the Supreme Court argued in Case No. 5Cdo/184/2014 that, even though consumer protection associations do not have the status of interveners in consumer disputes, this does not constitute a violation of Art. 47 of

the Charter, which regulates the fundamental right to an effective remedy before a court.¹⁰¹ According to the Supreme Court, on the basis of the judgment of the Court of Justice in Case C-470/12, it cannot be said that the refusal to allow an association to intervene in support of a consumer constitutes an infringement of that consumer's right to an effective remedy before a court, as enshrined in that Article.¹⁰²

100 Mazák, J., *The Charter of Fundamental Rights of the European Union in proceedings before the judicial protection bodies in the Slovak Republic*, Košice: Pavol Jozef Šafárik University in Košice, 2016, pp. 191-193.

101 Jánošíková, M., Mazák, J., *Penetration of the Charter of Fundamental Rights of the European Union into national law in the example of the Slovak Republic*, in: ACTA UNIVERSITATIS CAROLINAE – IURIDICA 2, p 16, available at: https://karolinum.cz/data/clanek/2882/lurid_2_2016_02_Mazak.pdf.

102 Resolution of the Supreme Court of the Slovak Republic, Case No. 5Cdo/184/2014, 28 July 2015.

Potential for implementing the Charter

The greatest potential of the Charter in the context of the Slovak legal order, where the primary role in the protection of fundamental rights is played mainly by the Constitution or the ECHR, can be seen in the wide range of guaranteed rights. It is a modern catalogue that reflects the demands of contemporary society. In the Slovak legal order, based on the jurisprudence of the Constitutional Court of the Slovak Republic¹⁰³, the Charter has the same status as international treaties containing fundamental human rights, which take precedence over the law.

Incorporating it into EU primary law, the Charter has acquired direct applicability in the national legal order, provided that EU law applies to the area in question. Although the Charter cannot be directly invoked in certain cases (the Charter's provision in question is a principle and has not been implemented by a legislative or executive act, nor is it otherwise directly applicable, or the case does not fall within the scope of EU law), the Charter increases the visibility of these rights.¹⁰⁴

The Charter contains, among other things, a number of rights that are not contained in any other international document. By comparison, the Charter provides for as many as 21 rights

that do not correspond in scope to the ECHR. Typical examples include the rights guaranteed in Articles 27 to 38, which are included in Title 4 of the Charter under the heading 'Solidarity', e.g. the right of workers to information and consultation within the undertaking (Art. 27), protection in the event of unfair dismissal (Art. 30) and consumer protection (Art. 38). Certain rights, which are expressed in both the Charter and the ECHR, are afforded greater protection under the Charter than under the ECHR. These include, for example, the protection of personal data (Art. 8), the right to marry and found a family (Art. 9), and the right to an effective remedy and a fair trial (Art. 47).

Another advantage of the Charter lies in its overall binding nature. Member States are obliged to comply with all its provisions, unlike the Council of Europe's European Social Charter, which offers the possibility of complying with only certain provisions. In addition to the above, the potential of the Charter is shown in the possibility of strengthening lesser-known rights that are not included in the constitutions of the Member States. Through the application of the Charter by national courts, national law is also developed, even outside the scope of EU law.¹⁰⁵

103 Ruling of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS 10/2014 of 29 April 2015.

104 EU Charter of Fundamental Rights in Slovakia, FRA, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-eu-charter-in-slovakia_sk.pdf.

105 Ibid.

Examples of good practice from other Member States

The European Commission has invited Member States, on the basis of the Strategy for Strengthening the Application of the Charter, to provide a focal point for the EU Charter of Fundamental Rights, to facilitate the flow of information and best practices on the Charter itself and to coordinate in-country capacity-building efforts.¹⁰⁶ By the end of 2021, 18 Member States had informed the European Commission about the provision of their focal point for the Charter. One Member State announced that no contact point would be appointed.¹⁰⁷

Slovakia is represented by the Human Rights Department, an organisational unit of the Slovak Ministry of Justice, as the focal point for the EU Charter of Fundamental Rights. As of May 2023, the Focal Point had not carried out any concrete activity apart from the kick-off meeting at the European level that took place back in autumn 2022.¹⁰⁸

Some Member States have published examples and information on the use of the Charter on the European e-Justice Portal. As of 2023, Croatia, Germany, Greece, Finland, France, Italy, Latvia, Lithuania, the Netherlands, Portugal, Romania, Austria, Slovakia, Spain and Sweden have thus far done so. The aim is to provide the information they contain:

- examples of government initiatives per Member State that actively promote the use of the Charter and awareness of the Charter among legislators, the executive and the judiciary;
- examples of how Member States are informing citizens about their Charter

rights and how they are working with the various relevant actors;

- examples of non-governmental initiatives that promote the use of and awareness of the Charter.¹⁰⁹

With the support of the Charter's Focal Points, this section could be regularly updated. It would then provide stakeholders with inspiration and information on how best to promote the use and awareness of the Charter among legislators, the executive and the judiciary. The procedures on the portal can also provide inspiration on how to inform people about their rights under the Charter and how governments can work with different actors, such as NGOs, national human rights institutions and national anti-discrimination bodies, to ensure the effective implementation of the Charter.¹¹⁰

The Charter is applied at several levels in the Member States. It may serve as a legal basis in decisions of administrative or judicial authorities. In the Netherlands, the Council of State found the applicability of the Charter in a case concerning a decision of the Director General of the Tax and Customs Administration. The Director refused to hire a certain attorney to represent his clients for a period of time because the attorney was harassing and intimidating Revenue and Customs employees. In this case, the appellant argued that the refusal to accept him as a representative violated a number of Charter rights. The State

106 Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, European Commission, p.6, available in English at: eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0711.

107 Fundamental Rights Report 2022, FRA, p. 30 available in English at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-fundamental-rights-report-2022_en.pdf.

108 Information provided at the working meeting on 24 May 2023.

109 Member States' best practices on the Charter, European Commission, available in English at: https://e-justice.europa.eu/37134/EN/member_states_best_practices_on_the_charter.

110 Fundamental Rights Report 2022, FRA, p. 31 available in English at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-fundamental-rights-report-2022_en.pdf.

Board concluded that the Charter applied to the case because the attorney also provided services to out-of-state clients. However, the Director's refusal was not in violation of the Charter.¹¹¹ In Romania, the Court of Appeal in Bucharest suspended the application of a government decision extending the state of emergency. The court ruled that the restrictions imposed on unvaccinated persons were not reasonable or necessary and thus violated the Charter.¹¹² In the Czech Republic, the Constitutional Court referred to the legal status of the consumer of consumer protection under the Charter, despite the fact that national law does not recognise it as such. The Constitutional Court pointed out that the district court could have applied Art. 38 of the Charter to ensure a high level of consumer protection by applying the relevant provisions of the Civil Code.¹¹³

The potential of the Charter is also promoted in the Member States through education in the fields of justice and administration. In Bulgaria, a coordinated effort has been put in place to provide judicial education on the Charter, through face-to-face, online and blended training on specific Charter rights. A new training programme on the use of the Charter in public administration has been launched in Spain. The need for education on the Charter has been further emphasised following the adoption in June 2021 of the new Regulation on Common Provisions for the EU Budget 2021-2027¹¹⁴, which requires, among other things, that effective mechanisms to ensure compliance with the Charter are in place for all programmes financed with EU funds.

For example, Croatia has adopted a draft action plan involving the development and implementation of training on the effective application of the Charter for bodies involved in the management and control system for the implementation of EU funds. In Romania, the administration has prepared specific guidelines for the application of the Charter in the implementation of European Structural and Investment Funds.¹¹⁵

Furthermore, the Charter plays a key role as **a reference tool for assessing the impact of legislation**. Finland has sought to enshrine in the Marriage Act the possibility to annul a forced marriage. The draft law states that recognition of foreign marriages falls within the national jurisdiction of EU Member States. However, if Finland does not recognise a marriage contracted in a foreign country as valid, this may interfere with the exercise of the right of EU citizens to move and reside within the territory of the Member States, as laid down in Art. 45 of the Charter. Nevertheless, the Bill concludes that such a restriction is reasonable and justified as it seeks to protect children since the Bill deals with marriages involving minors. Estonia has submitted a draft law amending the protected grounds in the law providing for the prohibition of incitement to hatred and violence in the provision of media services, which refers to Art. 21 of the Charter in the explanatory memorandum. Romania has proposed a law aimed at eliminating the distinction between maternity and paternity leave, referring to Arts. 23 and 33 of the Charter. In Germany, there is a parliamentary debate on a law that was supposed to explicitly

111 Ibid, p. 38

112 Ibid, p. 40

113 Fundamental Rights Report 2021, FRA, p. 48 available in English at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-fundamental-rights-report-2021_en.pdf.

114 REGULATION (EU) 2021/1060 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund, the European Maritime, Fisheries and Aquaculture Fund, and laying down budgetary rules for those Funds, as well as for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy.

115 Fundamental Rights Report 2022, FRA, pp. 33-34, available in English at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-fundamental-rights-report-2022_en.pdf.

enshrine the rights of the child. One Member of Parliament criticised the proposal, argu-

ing that the proposed protection was weaker than that provided under the Charter.¹¹⁶

Conclusion

The Charter forms part of EU primary law and takes precedence over national laws. Thus, in accordance with the principle of priority, the Charter takes precedence over the legal order of the Slovak Republic. This principle of priority is limited by Article 51 of the Charter, according to which it can only be invoked provided that the matter is within the scope of EU law.

The Charter performs various functions in the drafting or amendment of legislation and the preparation of public policies. National legislation must be interpreted in accordance with the Charter, and the Charter is the basic test for examining its constitutionality and legality. If they do not comply with the Charter, they must remain unenforced. Based on national legislative practice, it appears that the legal obligation to ensure compliance with the Charter when drafting legislation is of a rather formal nature, by making a strict reference to the Charter without any deeper analysis. In state policies, the Charter is used only as a point of departure or a source of regulation.

The judiciary is obliged to ensure that EU law has full and effective effect in its decision-making. The Constitutional Court of the Slovak Republic is obliged to take into account the requirement of a Euroconform interpretation of legal norms, also on the basis of its own jurisprudence, by which it has granted the Charter the same status as international treaties, which take precedence over the legal order of the Slovak Republic. The procedure depends on whether the legislation under review is non-harmonised, incompletely harmonised or fully harmonised with EU law. Assuming that the legislation is not harmonised, the Constitutional Court does not apply the Charter in principle. If a legal norm is incompletely harmonised, the

Constitutional Court of the Slovak Republic first examines the compatibility of this regulation with the Constitution and three situations may arise:

- Interpretation of national norms from the perspective of EU law admits their compliance with the Constitution – in this case, the Constitutional Court of the Slovak Republic performs a constitutional-conformational interpretation in accordance with EU law. Compliance with the Charter shall be reviewed if specifically requested by the petitioner and is applicable.
- Interpretation of national norms that incorrectly implement EU law does not allow them to comply with the Constitution – the Constitutional Court of the Slovak Republic finds a violation and the legislator must provide a remedy in accordance with EU law and the Constitution. Compliance with the Charter, however, does not need to be specifically examined in this case – the so-called self-limiting approach.
- Interpretation of national norms in the light of EU law does not allow their compliance with the Constitution, while there is doubt about the validity of EU law – the Constitutional Court of the Slovak Republic will turn to the Court of Justice of the EU in this case.

If the legal norm under consideration is fully harmonised with EU law, the Constitutional Court of the Slovak Republic will first of all examine its compatibility with the Charter. Within the court system, the Charter can be found in the decisions of courts of all instances in cases of a different nature. The Charter is most often referred to by the courts in the reasoning of decisions, as one of the legal frameworks that form the basis of the decision. The greatest potential for the application of

the Charter can be seen in the wide range of guaranteed rights, which are not expressed in the Constitution or in any other international source. Thus, the application of the Charter by national institutions leads to the development of national human rights law. Inspiration can be sought through good practice from other Member States. The Charter can serve as a legal basis for administrative or judicial deci-

sions or as a reference tool for assessing the impact of legislation. The most effective way to make the Charter known is through training in the judiciary or administration, where its application can bring about the greatest development of national human rights law, thus demonstrating the true potential and added value of the Charter.



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