

## EU CHARTER OF FUNDAMENTAL RIGHTS: WHAT IS THE LEGAL IMPACT OF BEING CHARTERED?

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***Abstract.** This paper argues that the Charter of Fundamental Rights brought innovations not only by structuring the human rights mechanisms of the European Union, but also by improving the existing international legal mechanisms for the protection of the human rights. A comparative analysis between the Charter of Fundamental Rights and European Convention of Human Rights is also presented in the paper. Comparing these two legal texts, the paper aims to determine whether the Charter competes with ECHR, aims to replace it or merely complements it. The human rights clause of EU conditionality policy plays a crucial role in raising the level of human rights protection and democratic development in the candidate states.*

### INTRODUCTION

In 2000 all European population saw a new document of the European Union – the Charter of Fundamental Rights and Freedoms. This Charter for the first time in the European Union's history sets out the whole range of civil, political, economical and social rights of European citizens and all persons resident in the European Union.

This paper argues that the Charter of Fundamental Rights brought innovations not only by structuring the human rights mechanisms of the European Union, but also advancing the existing international legal mechanisms for the protection of the human rights. The mere fact that the institutions of the European Union and member states acting in the area of the Community law should comply with the provisions of the Charter is an evidence of widening of the base that the European citizens can rely on to protect their rights and freedoms. Although the Charter is not legally binding, it has a great legal impact on the human rights protection in the European Union.

Before analyzing the status and the provisions of the Charter, the paper presents an overview of the human rights protection mechanisms the European Union. Here it mainly focuses on the Treaty provisions regarding fundamental rights and freedoms. Analyzing these legal acts of the European Union this paper shows the gradual development of the human rights protection mechanisms in the European Union. Besides that together with Treaty provision it presents basic cases heard by the European Court of Justice, which have played an important role in embedding the protection of human rights clause in the treaties of the European Union.

Basing on the above mentioned this paper refers to the Charter of fundamental rights and analyzes its legal status. Basically it focuses on the content of the Charter by presenting main legal provisions and provisions and the innovative provisions that it embeds. For the purpose to explore the innovative articles of the Charter, the comparative analysis between the

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Charter of Fundamental Rights and European Convention of Human Rights is presented in this paper. It is chosen particularly this legal text, since it was the main regional legal mechanism for the protection of human rights in Europe, before adoption of the Charter. Comparing these two legal texts the paper aims to determine whether the Charter competes with ECHR, aims to replace it or simple complements it. In this part it is also presented the cases whereby ECJ, ECHR, national courts invoke the Charter, as a clear example for my argument that the Charter has legal impact.

Finally, this paper analyses the human right protection as one of the basic requirements of the European Union towards candidate member states. It is argued that the human rights clause of EU conditionality policy plays a crucial role in raising the level of human rights protection and democratic development in the candidate states. The Charter as a consolidator of human rights in the EU strengthens the influence of EU over the candidate and member states. Here the paper focuses on the EU conditionality policy concerning Bulgaria, Romania, Turkey and Croatia.

### **Legal Premises for the Charter**

The Paris Treaty founded the European Coal and Steel Community did not contain any provisions regarding the protection of human rights and freedoms. Subsequent Rome Treaty can be determined as the starting point of the development of the human rights protection mechanisms of the European Union, because precisely in the

preamble of the Rome Treaty, the founding member states express their willingness to “preserve peace and liberty” and make the Union “ever close union of Europe’s peoples”<sup>1</sup>. As Rome Treaty (EEC Treaty) started “as an economic treaty, of limited ambitions, with the aim of creating a common market” it only contained such provision as improving living conditions and abolishing discrimination on the grounds of nationality, equal treatment of men and women at workplace, equal treatment for immigrant workers, and right of movement and establishment<sup>2</sup>.

Subsequent treaty amendments made explicit references to the main principles that the Community is basing. The preamble of the Single European Act of 1986 reflected the will of member states “to work together to promote democracy on the basis of the fundamental rights recognized in the Constitution and laws of the member states”<sup>3</sup>. The most important treaty concerning the development of fundamental rights principle is Maastricht Treaty embedded that “the Union shall respect fundamental rights, as guaranteed by the European Convention on Human Rights and as they result from the constitutional traditions common to member states as general principles of Community law”<sup>4</sup>. This provision is mainly a result of the judgments of the European Court of Justice. The following Amsterdam Treaty made innovation, by stating that “the Union is founded on the principles of liberty, democracy, respect of human rights and fundamental freedoms, and the rule of law”<sup>5</sup>. Moreover this

<sup>1</sup> European Economic Treaty, Rome 1957, Preamble

<sup>2</sup> *Ibid.*, Art. 7, 48- 51, 119

<sup>3</sup> Single European Act, 1986, Preamble

<sup>4</sup> Treaty on European Union, Maastricht, 1992, Article 6.2

<sup>5</sup> Amsterdam Treaty, Article 6.1

provision strengthened by a sanction procedure, whereby a member state's rights may be suspended if it engages in a serious and persistent breach of principles of fundamental human rights<sup>6</sup>.

The European Court of Justice has played a crucial role in developing the principle of fundamental human rights, whereby their judgments were mirrored in the subsequent treaties of the European Union. One of the first timid references to human rights can be found in *Stauder* case of 1969<sup>7</sup>. In this case the ECJ for the first time ruled that the protection of fundamental human rights constitutes one of the general principles of the Community Law and protected by the Court. The ECJ provided no further comment in this case on the nature, identity, or extent of these general principles<sup>8</sup>. This case put the basis for the development of the general principles since "the ECJ has already paid some attention to the development of general principles of individual protection, drawing not just on Treaty provisions but also on the principles of domestic origin such legal certainty, proportionality and due process<sup>9</sup>". In addition to the judgment in *Stauder* case, in subsequent case the ECJ went further by specifying that the protection of fundamental rights,

inspired by the constitutional traditions common to the member states, must be ensured "within the framework of the structure and objectives of the Community<sup>10</sup>".

*Nold* case further advanced the principle of fundamental human rights, where "ECJ affirms that it would strike down the provisions of Community legislation which are contrary to the fundamental rights protected by the constitutions of the member states and it adds that international treaties for the protection of human rights can supply guidelines which should be followed within the framework of Community law<sup>11</sup>". In this case the Court refers to the European Convention on Human Rights, stating that the Community law bases on acts of public international law such as ECHR<sup>12</sup>. In the following *Rutili* case the ECJ went further, where it not only invoked the specific articles of the ECHR, but also applied them, and not only to acts of Community institutions but to an act of a member state derogating from the Community freedoms<sup>13</sup>. Thus, member states must observe fundamental human rights "when they are enforcing Community policy and interpreting Community rules as well as derogating from Community law<sup>14</sup>". Moreover in one of the leading

<sup>6</sup> *Ibid.*, Article 7

<sup>7</sup> Case 29/69, *Stauder vs. Ulm*, [1969] ECR 419

<sup>8</sup> Paul Craig and Grainne de Burca, *European Union Law: Text, Cases and Materials*, Oxford University Press, New York, 2003

<sup>9</sup> U. Scheuner, *Fundamental rights in European Community and in National Constitutional Law*, 12 CMLRev. 171, 1975

<sup>10</sup> Case 11/70, *Internationale Handelsgesellschaft vs. Einfuhr und Vorratsetelle Getreide*, [1970] ECR 1125

<sup>11</sup> Nanette A. Neuwahl, *The European Union and Human Rights*, Martinus Nijhoff Publishers, The Hague, 1995

<sup>12</sup> Case 4/73, *Nold* [1974], ECR 491, the Court reiterated the *Nold* judgment in *Hauer* case, where it referred to the Protocol 1 of the European Convention on Human Rights.

<sup>13</sup> Case 36/75 *Rutili* [1975] ECR 1219

<sup>14</sup> Sionaidh Douglas-Scott, *Constitutional Law of the European Union*, Pearson Education, Edinburgh, 2002, p. 443

cases, the Court reiterating the requirement over member states that they must comply with fundamental rights, centered on the issue whether the adoption by a member states of certain way of implementation of Community laws in compatible with the protection of fundamental human rights<sup>15</sup>.

### **The Legal Status of the Charter of Fundamental Rights**

The Charter of Fundamental Rights is a result of long deliberations of whether the European Union should accede ECHR or it should have its own legal act including fundamental human rights. The new Convention process by which the Charter was adopted, which became a new model of adoption the Convention on the future of Europe, adopted a draft Charter within less than a year period<sup>16</sup>. As a result of the Convention, on 7 December 2000, the European Union Charter of Fundamental Rights was proclaimed by the respective representative of EU institutions, European Parliament, Council and European Commission.

The Charter with "a lofty preamble in the name of the peoples of Europe refers to the common and indivisible universal values on which the Union is founded and to diversity of cultures, tradition and identities in Europe, is divided into seven parts<sup>17</sup>. First six parts are headed Dignity, Freedoms,

Equality, Solidarity, Citizen's rights and Justice. Basically 50 rights embedded in the Charter are taken from preexisting legal text, such as ECHR, the European Social Charter, the Community Charter of Social Rights of Workers, ruling of ECJ and Court of Human Rights and constitutional tradition of member states<sup>18</sup>.

The rights contained in the first chapter, such as right to life, freedom from torture, slavery and execution, appear to sit oddly within a Charter which is primarily directed towards the institutions of the EU, given that their powers to infringe such rights remain very limited<sup>19</sup>. The chapter on freedoms mainly concentrates on basic civil and political liberties to be found in the ECHR, such as liberty, association, expression, property, private and family life, but also contains certain fundamental social rights such as the right to education, the right to engage in work, the right to asylum and more particular provisions as the rights to protection of data and the freedom to conduct a business<sup>20</sup>. Chapter III includes "a basic equality before the law guarantees" and mainly refers to a positive action in the field gender equality, protection for children's rights, and some weaker provisions quarantining respect for cultural diversity, for the rights of elderly and person with disabilities<sup>21</sup>. Chapter IV on solidarity contains certain labor rights and reflects some of the provisions of

<sup>15</sup> Case C-5/88, *Wachauf vs. Federal Republic of Germany*, [1989] ECR 2609

<sup>16</sup> Grainne de Burca, *The rafting of the EU Charter of Fundamental Rights*, 26 *ELRev.* 126, 2001

<sup>17</sup> Paul Craig and Grainne de Burca, *European Union Law: Text, Cases and Materials*, Oxford University Press, New York, 2003, p. 359

<sup>18</sup> Sionaidh Douglas-Scott, *Constitutional Law of the European Union*, Pearson Education, Edinburg, 2002, p. 475

<sup>19</sup> *Ibid.*

<sup>20</sup> C. McGlynn, *Families and the EU Charter of fundamental rights: Progressive change or entrenching the status quo?* 26 *ELRev.* 582, 2001

<sup>21</sup> Paul Craig and Grainne de Burca, *European Union Law: Text, Cases and Materials*, Oxford University Press, New York, 2003, 359

the European Social Charter which is already integrated into EC law<sup>22</sup>. The chapter of citizens' rights basically provides certain specific right to the citizens of the European Union. Justice, the final chapter, includes several rights of defense such as the right to fair trial, the presumption of innocence, the principle of legality and proportionality of penalties, and right to effective remedy<sup>23</sup>.

The charter as it was drafted is not currently legally binding, though there are scholars who think that a proper legal analysis makes it clear that it is legally binding<sup>24</sup>. First, the Charter does not create any impediments for the plaintiffs to protect his/her rights relying on existing EU law on human rights and second the Charter Convention was given a mandate to consolidate the existing EU law of fundamental human rights and not to amend it<sup>25</sup>. Thus as Menendez writes, "the Charter would be based not on its formal incorporation into community law, but on its character as authoritative consolidation of existing law<sup>26</sup>".

Although the Charter was designed as no having legally binding effect, it has already begun to have legal impact as a result of reference by the European Court of Justice and Court of First Instance. The widest use of the

Charter was in the case *BESTU vs. Secretary of State for Trade and Industry*, which concerns entitlement to annual leave. The Advocate General relying on the article 31 of the Charter stated that "the Charter provides us with the most reliable and definitive confirmation of the fact that the right to paid annual leave constitutes a fundamental right<sup>27</sup>". In *D and Sweden vs. Council* case the Advocate General in his opinion stated that although the Charter is not legally binding, it still constitutes "the most valuable evidence on the common denominator of the basic legal values shared by Member states<sup>28</sup>". Moreover as Advocate General Mischo stated the Charter constitutes "the expression at the highest level of a democratically established consensus on what must today be considered as the catalogue of fundamental rights guaranteed by the Community legal order<sup>29</sup>". Furthermore there are cases that basically based on the innovative articles of the Charter. As an example in the case *Netherlands vs. European Parliament*, the Advocate General invoked the provisions of the Charter, stating that it directly determine the fundamental status of the right to human dignity and the right to 'free and informed consent' of the person concerned in the fields of medicine and biology<sup>30</sup>.

<sup>22</sup> M. Gijzen, *The Charter: A milestone for social protection in Europe?* 8 MJ 33, 2001

<sup>23</sup> Paul Craig and Grainne de Burca, *European Union Law: Text, Cases and Materials*, Oxford University Press, New York, 2003, 359

<sup>24</sup> Agustin Jose Menendez, *Human rights: The European Charter of fundamental rights, Contemporary European Foreign Policy*, London, 2004, p. 8

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> Case C-173/99 *Broadcasting, Entertainment, Cinematographic and Theatre Union (BECTU)* [2001] ECR I-4881, opinion of Advocate General delivered on February 8, paragraph 26

<sup>28</sup> Case C-208/00, *Uberseeing BV vs. NCC Nordic Construction Company Baumangement*, Advocate General opinion, delivered on December 4, 2001 paragraph 59

<sup>29</sup> Joined cases C-20/00 and C-64/00, *Broker Aquaculture Ltd trading as Marine Harvest McConnell and Hydro Seafood GSP Ltd vs. Scottish Ministers*, Advocate General's opinion delivered on September 2001, paragraph 126

<sup>30</sup> Case C-377/98, *Netherland vs. European Parliament and Council of the European Union*, [2001] ECR I-7079, Advocate General's opinion delivered on June 14 2001, paragraph 197

Besides that the European Court of Justice and Court of First Tribunal, the Charter of fundamental rights was also invoked by the European Court of Human right and national courts. Regarding the former, Judge Costa in case *Hatton*, referred to the Article 37 of Charter on environmental protection, showing that the ECHR is not a unique legal text concerning environmental issues<sup>31</sup>. An example for latter can be decision regarding protection of personal data of the Spanish Constitutional Court, where it cited the Charter as legal authority and decision was took place some days before the Charter was solemnly proclaimed by European institutions<sup>32</sup>.

From the above mentioned it can be proved that the Charter of fundamental rights has legal impact though it is not legally binding text. Enumerating in systematic way the fundamental rights existing in the EU, the Charter is on the way to acquire the status of soft law as a part of *Acquis Communautaire*<sup>33</sup> (my italics). This consequently cause that the Charter is referred in judgments, regulations, directives, opinions, resolution or communications, "legal representative and advocates of sectional interests will invoke the Charter without further ado about its formal status<sup>34</sup>".

### The Charter and the ECHR

The European Union Charter of Fundamental Rights is innovative in containing, in comparison to other international documents on human rights on which it was based, especially European Convention on Human Rights of 1950. The Charter covers more economic and social rights in addition to the more traditional political and civil rights contain in the ECHR. As an example can be certain economic and social rights reflected in the chapter Solidarity. Thus, each worker is entitled with such rights as "rights to get information and consultation in good time within undertaking<sup>35</sup>", "workers have right to negotiate and conclude collective agreements at the appropriate level and in case of conflict to defend their interests, including strike<sup>36</sup>", each worker has right to protection against unjustified dismissal<sup>37</sup>", while working each worker shall be provided with "working condition with respect to his or her healthy, safety and dignity and with maximum working hours per day with weekly rest periods and annually paid leave<sup>38</sup>". All of these provisions are embedded in the chapter Solidarity which is innovate as it reflects the third generation of fundamental rights, group and collective rights introduced by Karl Vasak.

In contrast to the ECHR, the Charter also emphasizes the special rights of the children, whereby "children shall have

<sup>31</sup> Case *Hatton and other vs. the United Kingdom*, judgment delivered on October 2, 2001, p. 19

<sup>32</sup> Judgment 292/200, delivered on November 2000, the Spanish Constitutional Court invoked the directive 95/46 on data protection and Article 8 of the Charter, which mandates public authorities to ensure the protection of personal data.

<sup>33</sup> Sionaidh Douglas-Scott, *Constitutional Law of the European Union*, Pearson Education, Edinburgh, 2002, p. 474

<sup>34</sup> Agustin Jose Menendez, *Chartering Europe: Legal Status and Policy Implication of the Charter of Fundamental Rights of the European Union*, Arena Working Papers, WP 01/13

<sup>35</sup> Charter of Fundamental Rights and Freedoms, 2000, Article 27

<sup>36</sup> *Ibid.*, Article 28

<sup>37</sup> *Ibid.*, Article 30

<sup>38</sup> *Ibid.*, Article 31

the right to such protection and care as is necessary for their well being<sup>39</sup>, for the elderly where it states that the rights of elderly are respected in the way “to lead a life of dignity and independence and to participate in social and cultural life<sup>40</sup>”, and of persons with disabilities, precisely their rights are respected by the Union and their rights to independence, social and occupational integration and participation in the life of Community are recognized<sup>41</sup>. The last two provisions are rooted on the articles of the European Social Charter of 1965 and the Community Charter of Fundamental Social Rights of Workers of 1989.

Moreover the Charter of Fundamental Rights presents certain new human rights provision such as consumer protection, which basing on European Community Treaty provides that the “Union policies shall ensure high level of consumer protection<sup>42</sup>”. Besides that the Union policies also shall ensure high level of environmental protection in accordance with the principles of sustainable development<sup>43</sup>. In the area of health care, everyone’s right of access to preventive health care and to benefit from medical treatment is observed<sup>44</sup>. These provisions which in their nature are

innovative are embedded in the chapter Solidarity.

As a response to the challenge of the new technology, the most recent developments reflected in the Charter are provisions regarding protection of personal data, where everyone has “the right to the protection of personal data concerning him or her and such data must be processed fairly for specified purposes and on the basis of the owner consent<sup>45</sup>”. Besides that the Charter reflects the new technologies in the field of medicine and biology, whereby it prohibits eugenic practices, making the human body and its parts a source of financial gain and prohibits reproductive cloning<sup>46</sup>. Here basically the Charter bases on the principles already have been set in the Convention on Human Rights and Biomedicine adopted by the Council of Europe of 1997, especially regarding reproductive cloning. The part concerning eugenic practices includes practices aiming at the selection person which in its turn includes campaign for sterilization, forced pregnancy, compulsory ethic marriage<sup>47</sup>.

In addition, as the Charter mainly reflected the rights and freedoms of European Union citizens, it contains several articles on their political rights, such as write to vote and stand as a candidate at the election to the

<sup>39</sup> Ibid., Article 24

<sup>40</sup> Ibid., Article 25

<sup>41</sup> Ibid., Article 26

<sup>42</sup> Ibid, Article 38, it bases on article 153 on consumer protection of the treaty establishing the European Community.

<sup>43</sup> Ibid., Article 37

<sup>44</sup> Ibid. Article 35, this provision mainly bases in the European Social Charter and certain articles such 2, 4, and 174 of the Treaty establishing the European Community.

<sup>45</sup> Charter of Fundamental Rights and Freedoms, 2000, Article 8

<sup>46</sup> Thomas von Danwitz, *The Charter of Fundamental Rights of the European Union between Political Symbolisms and Legal Realism*, Denver Journal of International Law and Policy, 29, 2004, p.297

<sup>47</sup> Draft Charter of Fundamental Rights of the European Union, text of explanations, Brussels 2000, article 3, all these campaigns are deemed to be international crimes according to the Statute of International Criminal Court, Rome 1998

European Parliament, right to petition to the European Parliament and European Ombudsman, right to access to documents of all institutions of the European Union, freedom of movement and residence on the territory of any members states, right to diplomatic and consular protection by any member states of the European Union. These provisions are included in the chapter on Citizens rights and essentially constitute an additional base for the strengthening the institution of citizenship in the European Union.

Although there are certain differences between the Charter and the ECHR, these two international legal texts have more commonalities; mainly it is due to that the Charter mainly bases on the ECHR which was adopted 50 years before it. Thus it can be stated that the Charter basically complement the ECHR, because the mere fact of 50 articles of the Charter and 18 of ECHR on human rights is evidence. Both legal texts reflect such fundamental rights as right to life, liberty, security, freedoms of expression, conscience and religion, freedoms of assembly and association, right to fair trial and effective remedy, prohibition of discrimination and torture, right to found a family and have a private life. Therefore, certainly the Charter of fundamental rights does aim to compete neither with the ECHR nor with any other legal text in the area of human rights protection such as Universal Declaration on Human Rights. Moreover the Charter does intend to replace the many sources and systems of protection of fundamental rights which coexist in Europe such as ECHR<sup>48</sup>.

This can be seen from the preamble of the Charter, whereby it reaffirms the rights derived from “the constitutional traditions and international obligations common to the members states, the Treaty of the EU,..., the European Convention for the Protection of Human Rights and Fundamental Freedoms, Social Charter ....<sup>49</sup>”.

### **Human Rights and Membership in European Union**

The ECSC, EACT and TEC were the first the legal texts which merely put the basic conditions for candidate states, *European Condition*, which were democracy with respect for basic human rights<sup>50</sup>. The term European Condition did not mean merely in a geographic sense, but had normative sense, including rule of law and human rights. The subsequent European Parliament’s Birkelbach report elaborated further this condition, whereby it stated:

„The states in which governments are not democratically elected and in which citizens do not participate in collective decision-making either directly or through freely chosen representatives, cannot expect to be admitted to the society of peoples of the European Communities.“

Human Rights protection requirement was strengthened after the first enlargement process. Human rights protection as a condition for membership strictly was applied regarding the further accession of Greece, Portugal and Spain. Thus, in 1962 Spain’s application to join the European Community was terminated on the basis that non-democratic countries could not meet the sole criterion of membership that is

<sup>48</sup> Agustin Jose Menendez, *Chartering Europe: Legal Status and Policy Implication of the Charter of Fundamental Rights of the European Union*, Arena Working Papers, WP 01/13

<sup>49</sup> Preamble of the Charter of Fundamental Rights and Freedoms of the European Union, 2000

<sup>50</sup> Treaty on European Community, Article 237, Treaty establishing Coal and Steel Community, Article 98, European Atom Community Treaty, Article 205



being a ‘European country’<sup>51</sup>. Following 13 years the Community suspended negotiations on a trade agreement with Spain on the grounds of violations of human rights and absence of democracy<sup>52</sup>. In the same time the Community indicated to Portugal that while it can start to negotiate on economic cooperation, it could not support the low level of pluralistic democracies in Portugal<sup>53</sup>. In 1967 the Community, following a military coup in Greece, froze its association with it, applying only specific obligations of association agreement<sup>54</sup>.

The Treaty establishing European Union added two new articles regarding human rights standards as a main requirement for state who want to become a member of the European Union. Article 6 embedded the basic principles of Union such as liberty, democracy, respect for human rights and fundamental freedoms, and rule of law. Basing on the above mentioned principles article 49 TEU, which first was applied to ten new member states, Bulgaria and Romania provides that:

„Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament,

which shall act by an absolute majority of its component members.“

Basing on these two articles of the Treaty on European Union, Copenhagen European Council set the basic conditions “Copenhagen criteria” on compliance with human rights and democratic principles that had to be met by states applying for EU membership<sup>55</sup>. According to these criteria, the countries must have achieved “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities<sup>56</sup>”.

It can be inferred that Menendez is right when he wrote that “the Charter of fundamental rights, whether formally adopted or not – will become the document to which reference will be made in order to determine what articles 6 and 49 TEU require<sup>57</sup>”. Indeed the Charter is a legal text that has the highest authority regarding protection of fundamental rights in the European Union. The Charter of fundamental rights sets out in a single text *for the first time* in the European Union’s history, the whole range of civil, political, economic and social rights of European citizens and all persons resident in the European Union<sup>58</sup> (My italics). The mere fact that there certain cases where the courts, ECJ, CFT, ECHR refer to the provisions of the Charter is evidence that the Charter became a single text in the direct meaning of this word that modifies

<sup>51</sup> Lorand Bartels, *Human Rights Conditionality in the EU’s International Agreements*, Oxford University Press, Oxford 2005, p. 50

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> Copenhagen European Council, Conclusions, 21 and 22 June 1993, Bull C 6-1993, point I.13

<sup>56</sup> *Ibid.*

<sup>57</sup> Agustín José Menéndez, *Chartering Europe: Legal Status and Policy Implication of the Charter of Fundamental Rights of the European Union*, Arena Working Papers, WP 01/13

<sup>58</sup> Charter of Fundamental Rights and Freedoms, Brochure, 2000

preexisting provisions of treaties and cases.

Each of the ten new member states upon signing Accession treaties accepted the obligation to protect fundamental human rights contained in the Charter. Basically the conditionality policy concerning the level of human rights protection and rule of law of the EU has given its results in the newly joined member states. Thus, according to the Freedom House reports the level of protection of civil liberties in the states of Central and Eastern Europe was 2 in 2002<sup>59</sup>. This assessment shows the result of conditionality policy of the European Union toward these CEE states during roughly 10 years upon submission of application for membership. According to the subsequent Freedom House report of 2005, the level of civil liberties is 1<sup>60</sup>. This level proved the hypothesis that the conditionality policy of the EU, especially requirement concerning human rights protection, indeed has a great impact over candidate states.

Bulgaria and Romania are the next states that will become members of the European Union. The accession procedure is regulated by variety of provisions of EU legal texts. Essentially, Bulgaria and Romania have to comply first of all with the article 6 of the Treaty on European Union, because this article can be said became the fundament of conditionality policy concerning fundamental human rights. Besides that there are “human rights

‘commitments’ in the Europe Agreements, which in the case of Romania and Bulgaria include a human rights clause requiring ‘respect for the democratic principles and human right established by the Helsinki Final Act and the Charter of Paris for a New Europe<sup>61</sup>’. In this process the actions of Bulgaria and Romania is regulated by the provision of the Council Regulation, whereby it states:

„Where an element that is essential for continuing to grant pre-accession assistance is lacking, in particular when the commitments contained in the Europe Agreements are not respected and/or progress towards fulfillment of the Copenhagen criteria is insufficient, the Council, acting by a qualified majority on a proposal from the Commission, may take appropriate steps with regard to any pre-accession assistance granted to an applicant State<sup>62</sup>.“

In contrast to the Europe Agreements between EU and Bulgaria and Romania, the European Community – Turkey agreements do not contain any human rights clauses as a part of conditionality policy of the European Union. As a result the only standards that Turkey should comply is provisions of article 6 and 49 and obligations towards meeting Copenhagen criteria<sup>63</sup>. The situation is with Croatia, whereby the progress of Croatia is mainly regulated by the Council Decisions, which states that the Community progress to the western Balkan

<sup>59</sup> Freedom House Reports 2002, <http://www.freedomhouse.org/template.cfm?page=15&year=2002>, accessed on April 1, 2006. In general Freedom House has seven levels of assessment (from 1 till 7, whereby 7 is the lowest level and 1 is the highest one).

<sup>60</sup> Freedom House Reports 2005, <http://www.freedomhouse.org/template.cfm?page=15&year=2005>, accessed on April 1, 2006.

<sup>61</sup> Lorand Bartels, *Human Rights Conditionality in the EU's International Agreements*, Oxford University Press, Oxford 2005, p. 55

<sup>62</sup> Act 4 of Council regulation 622/1998

<sup>63</sup> Lorand Bartels, *Human Rights Conditionality in the EU's International Agreements*, Oxford University Press, Oxford 2005, p. 56

countries is conditional on further progress in satisfying the Copenhagen criteria. Croatia in its turn should comply not only with Copenhagen criteria but also with the conditions defined in the EU Council Conclusions of 1997, which states that Croatia can get financial assistance only "if there is a country's credible commitment to democratic reforms and progress in compliance with the generally recognized standards of human and minority rights<sup>64</sup>".

### Conclusion

The Charter of fundamental rights is a product of a long period of development of human right protection mechanisms in the European Union. Including the basic and innovative human rights articles, the Charter can be perceived as a pick-point of furthering the human rights in the European Union. Although the Charter does not have legally binding force, it has a great impact over human rights issues, as it is the first single text in the European Union's history which embedded a whole range of social, political, economic and civil rights. Without being legally binding the provisions of the Charter is invoked by the European Court of Justice, Court of First Tribunal, European Court of Human Rights and national courts.

Having been divided into six sections, the Charter includes the basic and innovative provisions that meet the development of new technologies, such as protection of personal data and prohibition of cloning of human beings. In comparison the ECHR, the Charter

presents a wide range of civil and economic rights. Besides that the whole section four, Solidarity is devoted to the basic group and collective rights. Basing on the main provision of the European Convention on Human Rights and adding new articles, the Charter does not aim to replace the ECHR or compete with it, but merely complements it.

As a result of long run development of human rights in the European Union, human rights clause became one of the core requirements for candidate states to be admitted to the European Union. At the present the two main articles of TEU, article 6 and 49 provide the basis for the EU membership. Copenhagen criteria developed as a respond to the willingness of Central and East European states to become a member of the EU after the collapse of the Soviet bloc, mainly rely on the abovementioned article 6 and 49. The Charter in its turn plays an important role in the conditionality policy of European Union, since it includes the whole of basic human rights that each candidate and member should provide. It basically clarifies the fundamental human rights that constitute the principle contained in the Article 6 TEU. Having a great impact over the candidate state the European Union succeeds in its conditionality policy. The fact of democratic development in the newly joined ten CEE state can be clear evidence and creates conviction that this success will be repeated in case of Bulgaria, Romania, Turkey and Croatia – the main candidates for European Union's membership.

<sup>64</sup> Council Conclusions on the principle of conditionality governing the development of the European Union's relations with certain counties of South – East Europe, April 29 1997, Bull EU 4-1997, p. 2.2.1

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