Chapter 14

The Role of the Charter in the Croatian Legal Order

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1 Introduction

Croatia joined the European Union a little more than a year ago on July 1, 2013. Hence, it is not particularly surprising that the Charter of Fundamental Rights of the European Union (hereinafter, the Charter) is still relatively unknown, not only to average citizens but to members of the legal profession as well.¹ Since the membership period is still too short to discuss actual instances of the Charter’s enforcement in practice, this chapter will focus on the significance that the Charter may have for the protection of human rights in the Croatian legal system. I will argue in this chapter that the Charter offers considerable potential to significantly improve the quality of human rights protection in Croatia. To demonstrate this claim I will first describe, in Section 2, the formal legal status of the Charter in the Croatian constitutional framework. In Section 3, I will discuss the manner in which the Croatian legal order treated human rights guarantees in adjudication.² I will primarily focus on the formalistic authoritative manner in which “regular” courts have employed human rights guarantees offered by the Constitution and the European Convention on Human Rights. By identifying the main drawbacks of the Croatian system of human rights protection this section will set up a background for the claim that the Charter offers considerable potential for change. In Section 4, I will provide a list of reasons that offer support to the claim that the Charter has the potential for improving the protection of human rights in Croatia. Finally, before drawing some final conclusions in Section 6, I will use Section 5 to present some main challenges that the Charter may bring before the Croatian judiciary in a rather near future.

² I use the terms human rights and fundamental rights interchangeably throughout the text.
Brief Overview of the Charter’s Status in the Croatian Legal Order

The Constitution of the Republic of Croatia (hereinafter the Constitution) is rather clear when it comes to the Charter. The Charter is, just like the founding Treaties, an integral part of the Croatian constitutional framework.\(^3\) Moreover, looking from the perspective of those favouring neat formal arrangements, the Charter proudly takes its place at the highest level of the Croatian legal hierarchy.

The legal status of the Charter in the Croatian legal order is determined primarily by Article 145 of the Constitution. Article 145/2 provides a “circular mandate” stating that EU legal acts enacted at the EU level must be enforced in the Croatian legal order in accordance with the EU *acquis*. Consequently, from the Croatian constitutional perspective, the conditions for the application of the Charter in the Croatian legal order are set by the Charter and the relevant case-law of the Court of Justice of the European Union (hereinafter, the CJEU). The Article 145/2 circular mandate has some profound implications. Due to the principle of supremacy of EU law, the Charter *de facto* superseded the system of human rights protection in the Croatian legal order developed before the accession to the EU (July 1, 2013).

The starting point of the human rights protection before the accession was the list of fundamental rights and freedoms provided in Chapter III of the Constitution (hereinafter, the Chapter III bill of rights). Moreover, due to the approach favoured by the Constitutional Court of the Republic of Croatia (hereinafter, the Constitutional Court or the CC), the fundamental rights and freedoms listed in the Constitution ought to be interpreted in accordance with the European Convention of Human Rights and Fundamental Freedoms (hereinafter, the ECHR).\(^4\) Croatia joined the ECHR in 1997 and thenceforth the ECHR has been more than merely an integral part of the Croatian legal order. Because of the special status of international agreements provided by Art 140 and Art 141 of the Constitution the ECHR has enjoyed a superior legal status since its ratification. From a formalist perspective, in the Croatian legal hierarchy the ECHR stood above all domestic legal acts enacted by the Parliament except for the Constitution.\(^5\) The Constitutional Court took a further step by insisting that all fundamental rights provisions must be interpreted

\(^3\) Ustav Republike Hrvatske (Narodne Novine 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14).
\(^4\) Europska Konvencija za zaštitu ljudskih prava i temeljnih sloboda (Narodne Novine Međunarodni Ugovori 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10).
\(^5\) See also the decision of the Constitutional Court *U-II-433/94*, February 2, 1995.