



Collecting promising practices on Charter use in the Ombudsman's work

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Abbreviations

UN – United Nations

ECHR – European Court of Human Rights

ENNHRI – European Network of the National Human Rights Institutions

EU – European Union

CJEU – Court of Justice of the European Union

Charter – Charter of Fundamental Rights of the European Union

TFEU – Treaty on the Functioning of the European Union

LLC – Limited Liability Company

JSC – Joint Stock Company

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Table of Contents

| | |
|--|----|
| Abbreviations | 2 |
| Introduction | 4 |
| Overview of the use of the Charter in the work of the Ombudsman’s Office | 6 |
| Training for Lawyers of the Ombudsman’s Office | 7 |
| Participation in conferences | 7 |
| General overview of the reference to the Charter in the analysis of situations | 9 |
| Replies to state authorities..... | 10 |
| Responses to entrepreneurs | 13 |
| Responses to individuals | 14 |
| Concrete examples..... | 19 |
| Example 1 | 19 |
| Example 2 | 20 |
| Example 3 | 22 |
| Example 4 | 23 |
| Example 5 | 26 |
| Example 6 | 28 |
| Example 7 | 30 |
| Conclusions | 33 |

Introduction

The Charter of Fundamental Rights of the European Union (Charter) has become legally binding on the European Union (EU) with the entry into force of the Treaty of Lisbon in December 2009. The Charter aims to promote the protection of human rights within the territory of the European Union. The rights of individuals in the European Union were established at different times, in different ways and forms. For this reason, the European Union decided to bring them all together in a single document, which was updated considering the changes in society, social progress, and scientific and technological development. The Charter brings together in a single text all the personal, civil, political, economic, and social rights that EU citizens enjoy.

The Charter includes:

- rights enshrined in the Treaties of the European Union;
- all rights deriving from the case-law of the Court of Justice of the European Union (CJEU);
- rights and freedoms enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention);
- other rights and principles deriving from the common constitutional traditions of the EU Member States.

The Charter has the same legal value as the Treaties of the European Union. The Charter divides rights and freedoms into six sections: respect, freedoms, equality, solidarity, citizens' rights, the rule of law. The Charter also incorporates the latest fundamental rights, namely data protection, guarantees in the field of bioethics, and transparent, good governance.

The Convention ensures a minimum of human rights. The Charter is a newer, more modern, and broader human rights instrument than the Convention. It also includes rights specific to the EU. The Charter includes, for example, the right of employees to information and consultation, protection against unjustified dismissal, the rights of children and the elderly, the prohibition of child labour and the protection of young people at work, access to services of general economic interest, consumer protection. The Charter complements the rights enshrined in the constitutions of the Member States as well as in international instruments.

The Charter is directly applicable and has a primary character.

The Charter distinguishes rights and principles. Both rights and principles are binding. Rights must be respected, but principles must be followed. Classic examples of principles include solidarity,

rights of the elderly, protection of the environment, equality between men and women. The principles of the Charter may be invoked in the context of judicial proceedings. According to the Charter, the principles of national courts are used only for the purpose of interpreting the legality of the laws of the Member States implementing the EU law.

Chapter 8 of the Constitution of the Republic of Latvia (Satversme) is devoted to fundamental rights: civil and political rights, social and economic rights, and cultural rights. Although the Constitution does not refer to specific documents of international law, Article 89 of the Satversme states that the State recognises and protects fundamental human rights in accordance with this Constitution, laws and international agreements binding on Latvia.

International human rights norms and the practice of their application at the level of constitutional law serve as a means of interpretation to determine the content and scope of fundamental rights and other general principles of law, in so far as this does not lead to the reduction or restriction of the fundamental rights enshrined in the Satversme.¹

Based on Article 68 of the Constitution, the EU law has become an integral part of the Latvian legal system with the accession of Latvia to the European Union², and Latvia must fulfil its obligations arising from membership of the European Union³.

In accordance with Article 51 of the Charter, the Charter is used in the application of EU law.

The reference to the Charter in interpreting EU law is insufficient. The application of the Charter must be promoted in all EU Member States' institutions, including the legislator, the executive, and the judiciary.

¹ Paragraph 19 of the judgment of the Constitutional Court of 24 November 2017 in case No 2017-07-01, paragraph 10 of the judgment of the Constitutional Court of 29 June 2018 in case No 2017-28-006.

² Paragraph 16 of the judgment of the Constitutional Court of 6 June 2018 in case No 2017-21-01.

³ Paragraph 13.3 of the judgment of the Constitutional Court of 19 October 2011 in case No 2010-71-01.

Overview of the use of the Charter in the work of the Ombudsman's Office

This research focused on the use of the Charter in the work of the Ombudsman's Office from 1 January 2020 to 31 August 2023.

In August 2023, a survey was conducted among the staff of the Ombudsman's Office to find out how employees use the Charter in their professional work. 20 members of the Ombudsman's Office took part in the survey on the EU Charter of Fundamental Rights. Nine respondents, or 45 %, do not use the Charter referring to international law, three or 15 % use it, while the remaining 40 % do so sometimes or rarely.

The survey showed that Article 41 of the Charter 'Right to good administration' is used most often in the references, also Article 47 'Right to an effective remedy and to a fair trial' was repeatedly mentioned in the survey. According to the survey, the articles used in references were also Article 1 'Human Dignity'; Article 14 'Right to education'; Article 15 'Freedom to choose an occupation and the right to engage in work'; Article 17 'Right to property'; Article 18 'Right of asylum'; Article 19 'Protection in the event of removal, expulsion or extradition'; Article 24 'The rights of the child'; Article 34 'Social security and social assistance'. Only two respondents of the survey acknowledged that the use of the Charter in legal analysis has had an impact on the outcome of the process, most participants (11) admitted that they do not know whether such an impact had occurred.

Four respondents of the survey acknowledged that their knowledge of the Charter was sufficient, while others considered that knowledge is insufficient or could be improved. Almost all participants (19) admitted that they would like to supplement their knowledge of the Charter. Between January 2020 and August 2023, three employees participated in trainings, seminars, or conferences on the Charter, two of these were organised by ENNHRI, and one was organised by the Academy of European Law (ERA).

Almost all survey participants admitted that the Charter is used minimally or rarely in the Latvian legal space, and opinions were expressed that the Charter duplicates other international and national documents.

Training for Lawyers of the Ombudsman's Office

To deepen the knowledge of lawyers of the Ombudsman's Office about EU laws and regulations, on 26 March 2021 training on EU law was organised by A. Buka, assistant professor of the Department of International and European Law of the Faculty of Law of the University of Latvia. In this training, lawyers got to know the sources of EU law, EU primary and secondary legislation. The training provided an insight into the main search tools for EU judicial decisions. It was important to understand the place of EU legislation in the system of regulatory enactments. The principle of the primacy of EU law should be considered, which means that the founding treaties of the EU take the first place immediately after the Constitution of the Republic of Latvia. Then international treaties rank. If there is a conflict between the two laws and regulations, then the founding treaties of the EU prevail. The next hierarchy of laws and regulations includes regulations and directives, followed by laws and local government binding regulations.

Participation in conferences

In November 2022, Riga Graduate School of Law organised the Annual Human Rights Conference with the participation of judges, lawyers and employees of state institutions who work with the application of human rights in their professional activities. During the conference, Professor I. Ziemele, Judge at the Court of Justice of the EU, presented the latest case law of the CJEU in the application of the Charter. Most lawyers of the Ombudsman's Office attend the conference every year. According to Prof. I. Ziemele, the CJEU does not directly identify any infringement. The protection of EU fundamental rights appears through the work of national courts, as national courts are the ones applying the Charter. The Charter is used when the Latvian authorities apply primary or secondary EU law. The role of the CJEU is to assist the national judge. Prof. I. Ziemele stressed that the application of the Charter was expanding. In the light of the Charter, the following legislation is interpreted: migration and asylum policy, criminal cooperation, free movement of capital, competition law, protection of personal data. The CJEU primarily assists national courts in applying the Charter in preliminary ruling proceedings as well as in infringement proceedings. In infringement proceedings, the CJEU refers to non-compliance with the Charter. Prof. I. Ziemele presented several judgments of the CJEU between December 2021 and October 2022, where EU law was interpreted in the light of the Charter.

The following judgments of the CJEU, which were discussed by lawyers, were presented.

CJEU judgment of 14 December 2021 in Case C-490/20 (Stolichna obshtina, rayon 'Pancharevo'). Article 21(1) of the Treaty on the Functioning of the European Union (TFEU), Directive 2004/38 – the right to free movement of EU citizens and their family members is interpreted in conjunction with Articles 7 and 24 of the Charter. The child of Bulgarian citizens residing in Spain needed an identity document to visit Bulgaria. The Bulgarian authorities did not issue it, thus hindering freedom of movement. The CJEU pointed to Article 21 TFEU and the need to find the possibility of issuing such a document at administrative level.

CJEU judgment of 5 May 2022 in case C-83/20 (BPC Lux 2 and Others). Directive 2014/59/EU establishing a recovery and deposit regime for credit institutions and investment firms has been interpreted in the light of Article 17(1) of the Charter. The specific case concerned a risk bank in Portugal. The CJEU stressed that according to the principles of EU law, if the Directive is to be transposed, there should be no action in national law that would impede that transposition. During the transposition period, the Charter is applicable, and the situation is therefore to be assessed from the perspective of the Charter. The Directives are clarified by reference to the first paragraph of Article 17 of the Charter.

CJEU judgment of 1 August 2022 in Case C-242/22 PPU (Illumina, TL). Directives 2010/64 and 2012/13 on the right to interpretation and translation in criminal proceedings and on the right to information in criminal proceedings have been interpreted by reference to Article 47 of the Charter. In Portugal, a Moldovan citizen was sentenced to a suspended custodial sentence but had to be in a fixed place of residence. The CJEU referred to two directives. The person was summoned to court, but at the place of residence he could not be reached. The suspended sentence was replaced by a real custodial sentence. The CJEU stressed: the national enforcement regime must be applied in such a way as not to lead to an ineffective application of EU law. The interpretation took place through Article 47 of the Charter.

CJEU judgement of 1 August 2022 in Case C-720/20 (Bundesrepublik Deutschland). Article 20(3) of the Dublin III Regulation. Chechen refugees from Poland had a child born in Germany. The German authorities did not grant the child asylum based on the Dublin Regulation and stated that the family should return to Poland and the child should apply for asylum there. The CJEU disagreed with such an interpretation, stating that the child was not property. Paragraph 3 of Article 20 shall not apply.

CJEU judgment of 2 February 2022 in the Case C-562/21 PPU (Openbaar Ministerie). Article 1(3) of Framework Decision 2002/584/JHA is interpreted in the light of Article 47 of the Charter. The Amsterdam court asked whether it was entitled, from the point of view of EU law, to refer a person to a Polish court so that he could appear before the court for a crime committed in Poland. The Amsterdam Court had doubts as to whether there was a fair administration of justice in Poland. The central question was whether the execution of the judgment violated the Charter. The CJEU applied a two-step test in this case: whether there are systemic problems with the independence of the judiciary in an EU Member State, and the second is that the defendant in question must provide the Amsterdam court with more specific arguments why the court to which he is being sent has problems.

The conference also addressed issues of the EU's constitutional system.

General overview of the reference to the Charter in the analysis of situations

The Ombudsman most often refers to the Convention when providing legal basis for the situation analysis. References to the Charter can be found, but the use of the Charter in legal analysis should be extended. Similarly, the use of the case law of the CJEU should be extended.

For this research documents were selected from the record-keeping system of the Ombudsman's Office, the text of which refers to the EU Charter of Fundamental Rights. Reference to the Charter was made both in responses to submissions of private individuals, Ombudsman's opinions, or applications to the Constitutional Court, as well as in letters to the Cabinet of Ministers, ministries, and local governments. Reference to the Charter is made both in letters to public authorities, businesses, and private individuals.

The Charter is mentioned both in general terms and referring to specific articles of the Charter. The replies refer to Title 3 'Equality'; Article 4 'Prohibition of torture and inhuman or degrading treatment or punishment'; Article 7 'Respect for private and family life'; Article 8 'Protection of personal data'; Article 15 'Freedom to choose an occupation and right to engage in work'; Article 17 'Right to property'; Article 21 'Non-discrimination'; Article 24 'The rights of the child'; Article 41 'Right to good administration'; Article 47 'Right to an effective remedy and to a fair trial'; and Article 51 'Field of application'.

Responses to submissions of private individuals with reference to the Charter were selected from January 2020 to August 2023. For example, in a response to a submission about national penalty policy, reference is made, inter alia, to Article 41 of the Charter.

In response to a submission for alleged discrimination based on age in the non-bank crediting, the following was pointed out: 'The prohibited criteria, which are not listed *expresis verbis* in the Paragraph 1 of Article 3⁽¹⁾ of the Consumer Rights Protection Law, must be read there by interpretation using historical, systemic, and teleological methods of interpretation. The catalogue of "readable" prohibited criteria must not be narrower than the Catalogue of the European Charter of Fundamental Rights and the list of criteria which include, inter alia, the prohibition of discrimination on grounds of age.'

Several submissions asked whether the exclusion of Russian citizens from using a sports aircraft and being a member of the flight crew did not constitute an infringement of the prohibition of discrimination on grounds of nationality. To clarify the situation, reference was made to Article 52 of the Charter, which provides that any limitation on the exercise of rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. Restrictions may only be imposed if they are necessary and meet objectives of general interest of the EU.

Replies to state authorities

In a report of February 2020, the Ombudsman informed the Court Administration, presidents of courts, and the State Police about the unsuitable conditions in the premises of the convoy areas of court buildings. The report followed visits aimed at identifying and preventing risks of ill-treatment. In the report, the Ombudsman referred to the prohibition of ill-treatment and torture laid down in Article 95 of the Satversme of the Republic of Latvia. The report stressed that the prohibition of torture or cruel or degrading treatment was also mentioned in other international treaties binding on Latvia, such as the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 4 of the Charter.

In May 2020, in a letter to the State Police, the Ombudsman asked for additional information on the processing of driver data by means of photoradars. The Ombudsman asked for clarification of

the purpose of the data processing. In his request, the Ombudsman referred to Article 8(1) of the Charter, which provides that everyone has the right to the protection of their personal data. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons regarding the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC was interpreted in the light of the Charter.

In February 2023, the Ombudsman contacted the European Union Structural Funds monitoring authorities⁴ in Latvia at the request of the European Union Agency for Fundamental Rights to examine the current situation regarding the monitoring of EU funds by human rights in Latvia. The letter underlines that Article 51 of the EU Charter of Fundamental Rights states that the provisions of the Charter apply to Member States when they are implementing EU law.

In May 2020, the Ombudsman informed the Cabinet of Ministers and the Saeima about the topicality of social and economic law in the context of the COVID-19 pandemic. In this context, the Ombudsman referred to the EU Charter of Fundamental Rights, the European Pillar of Social Rights, the European Social Charter, the European Convention on Human Rights and the UN human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights.

In the Ombudsman's 2022 Annual Report to the Saeima Section on good administration refers to the principle of good administration enshrined in Article 41 of the Charter.

In April 2020, the Ombudsman asked the Ministry of Economics and the Public Assets Manager *Possessor* on the application of the Privatisation Law to citizens of an EU Member State. The Ombudsman referred to the fundamental rights and freedoms enshrined in the EU Charter of Fundamental Rights, the TFEU, Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

⁴ [Cabinet Regulation No 661 of 21 November 2014 on the composition of the Monitoring Committee for the European Union Structural Funds and Cohesion Fund 2014-2020](#). Adopted 21.11.2014, entered into force on 21.11.2014.

In May 2023, a person in their submission referred to a violation of their privacy and data protection, because the economic operator had to indicate their registration data – first name, surname, personal identity number and declared place of residence in the supporting documents issued for the transaction. A document certifying the transaction may be issued to another person. As a result, a natural person's data is made publicly available to an unlimited circle of persons and may be used for bad purposes. In carrying out assessment of the situation in a verification procedure, the Ombudsman pointed out that the right to inviolability of private and family life, apartment and correspondence is laid down in Article 8 of the Convention and Article 7 of the EU Charter of Fundamental Rights. The right to the protection of personal data is enshrined in Article 8 of the Charter, which requires such data to be processed fairly for specified purposes and based on the consent of the person concerned or other legitimate grounds provided for by law.

In July 2020, in a verification procedure the Ombudsman analysed the actions of the State Revenue Service publishing personal data. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons regarding the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) has been interpreted in the light of Articles 7 and 8 of the Charter.

It is emphasised that Recital 1 of the Preamble to the General Data Protection Regulation states that the protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter, and Article 16(1) TFEU provide that everyone has the right to the protection of their personal data.

An opinion in the Ombudsman's verification procedure was provided to the municipality and the municipal police on the alleged violation of fundamental rights and the effectiveness of the law enforcement mechanism. The Ombudsman referred to the judgment of the ECHR, which stressed that the purpose of the State's obligation to ensure a timely examination of the case is to avoid excessively long legal uncertainty, as well as to maintain confidence in the efficiency and reliability of the judicial system.⁵ The Constitutional Court has also recognised⁶ that the right to a timely examination of a case is one of the constituent elements of a fair trial. The first paragraph of Article 41 of the Charter and Article 10(5) of the Law on the structure of public administration, on

⁵ ECHR case *Bottazzi v. Italy*, &22, 28 July 1999

⁶ Judgment of the Constitutional Court of 1 November 2012 in case No 2012-06-01 para. 13.3.2

the other hand, recognise the timely action of the institution as an element of the principle of good administration. Reference is also made to Article 47(2) of the Charter on a person's right to a fair trial. At the same time, it is emphasised that the right to a fair trial should not be interpreted as the right of the victim to request the institution (court) to take a decision of content or to punish the perpetrator of an offence in a certain way.

A verification procedure was initiated based on a submission by the association of disabled persons and their friends "Apeiron" regarding unsecured access to the environment in the student hostel (boarding facilities) of the Smiltene Secondary School. Having assessed the legal and factual circumstances, the Ombudsman issued an opinion to the responsible ministries and Smiltene municipality Council, referring to the first part of the second sentence of Article 110 of the Satversme that "the State specifically assists children with disabilities". It is also stressed that the legal order of the European Union also prohibits discrimination based on other grounds specific to children, such as sex, genetic features, language, disability, or sexual orientation, in accordance with Article 21 of the Charter.⁷

Responses to entrepreneurs

In April 2021, the Ombudsman turned to the merchant, as he saw possible discrimination based on age in a spectacle advertisement. Thus, the Ombudsman referred to international law binding on Latvia – the Charter (Chapter 3), the Convention (Article 14, Article 1 of Protocol No 12), the European Social Charter (Article E), the Universal Declaration of Human Rights (Articles 1 and 2).

In November 2022, questions were sent to JSC "Augstspriegumu tīkls" about cooperation with the entrepreneur, who allegedly pollutes the environment. It was noted that the right to health was included in the Constitution and the Charter.

In August 2021, the Ombudsman turned to the construction company regarding visual presentation and text of the job advertisement, which was of a sexual nature. The Ombudsman stressed that the principle of non-discrimination is enshrined in several international and national laws. Thus, Article 21 of the Charter provides: "any discrimination based on any ground such as

⁷ [European Union Agency for Fundamental Rights and the Council of Europe Handbook on European legislation on children's rights, 2015](#)

sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited”.

In July 2020, in response to a person’s complaint about the attitude of LLC “Jūrmalas autobusu satiksme” towards a disabled person, the Ombudsman sent a letter to the company informing about the principle of non-discrimination enshrined in Article 21 of the Charter and other national and international legislation.

On 20 September 2022, a reply was given to applicants (individuals) and entrepreneurs – the owner of a cafe. On May 9, 2020, the applicants were not served in the café “Kūriņš” in Jūrmala city, because they had St George’s ribbons attached to their clothes. In his opinion, the Ombudsman pointed out that according to Article 91 of the Satversme human rights are exercised without discrimination. The criteria prohibited by that provision are not expressly listed but must be read there by way of interpretation. The list of ‘readable’ prohibited criteria cannot be narrower than the Catalogue of the European Charter of Fundamental Rights and the list of criteria in its original version. These prohibited criteria include nationality, political and other beliefs, worldview. At the same time, it is emphasised that in this geopolitical situation, the public use of St George’s ribbon can be perceived as support for the Russian military force to achieve its political goals in other countries, especially Ukraine. The regulatory framework provides that the use of St Georg’s ribbons is prohibited at public events. The Ombudsman did not see a violation of human rights in this situation.

Responses to individuals

In September 2021, commenting on the person’s request to punish certain officials with the death penalty, it was stressed that the death penalty has been abolished in Latvia since 2011. Protocol 13 to the Convention provides for the complete abolition of the death penalty and the Charter prohibits the death penalty under the jurisdiction of the countries of the European Union.

In May 2022, commenting on the amendments to the Law on Local Governments, which provided for the possibility of reassigning an employee to another position, having assessed the opinion of the employee, the Ombudsman pointed out that such a legal provision may affect the legal protection of an employee in an individual case, causing adverse consequences. Article 15 of the

Charter guarantees that everyone has the right to engage in work and pursue a freely chosen or accepted profession. Such guarantee of fundamental rights also arises from the scope of Article 106 of the Satversme.

In March 2022, the opinion of verification procedure on the right of a person to appeal against a decision on confiscation of property to a court states: Recital 38 of Directive 2014/42/EU states that this Directive respects the fundamental rights and observes the principles recognised by the Charter and the Convention, as interpreted by the case-law of the European Court of Human Rights. This Directive should be implemented in accordance with those rights and principles. One of the fundamental rights enshrined in Article 47 of the Charter is the right to a fair trial, which enshrines the right to an effective remedy for everyone whose rights and freedoms guaranteed by the law of the Union are violated. They provide that everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. On the other hand, according to Article 17 of the Charter, everyone has the right to own, use and dispose of lawfully acquired property, use, and dispose of it, as well as the right to order him or her in the event of his or her death. No one may be deprived of his property unless it is necessary in the public interest and in the cases and under the conditions laid down by law, provided that fair compensation is paid in good time for the damage.

In February 2023, the Ombudsman, in his reply to a person regarding obstacles to voluntary execution of the judgment, emphasised: although the court is not a classic “subject” of the principle of good administration, it must also respect this constitutional general principle of law, which is implicitly enshrined in Article 1 of the Satversme of the Republic of Latvia and recognised as a fundamental right of the European Union (Article 41 of the Charter).

In February 2022, the Ombudsman referred to Article 21 of the Charter, the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights, the Universal Declaration of Human Rights in response to an application by a person with disabilities regarding a possible violation of the prohibition of discrimination.

In April 2020, the Ombudsman referred to Article 21 of the Charter for alleged discrimination when dismissing a person from work in the Riga Social Service.

In March 2021, the applicant turned to the Ombudsman with a complaint about discrimination based on age. In his reply, the Ombudsman referred to Article 21 of the Charter.

In July 2021, the Ombudsman received an application for ongoing proceedings between parents regarding the determination of the place of residence of their children. The applicant indicated that during the proceedings the opinion of her sisters and brother had not been considered in the court, and therefore asked the Ombudsman to intervene. Article 24 of the Charter states that the views of the child according to the age and maturity of the child shall be considered in matters which concern the best interests of the child. Reference is also made to Article 12 of the United Nations Convention on the Rights of the Child.

In April 2022, the person indicated in the submission possible discrimination based on age and gender, as well as violation of the principle of good governance in the selection of women's 3x3 basketball team. In his reply, the Ombudsman relied, inter alia, on Chapter 3 of the Charter, the Convention (Article 14, Article 1 of Protocol No 12), the European Social Charter (Article E), the Universal Declaration of Human Rights (Articles 1 and 2), etc.

In July 2021, the Ombudsman referred to several human rights documents, including Articles 7 and 8 of the Charter, in response to the submission regarding the indication of the personal code on the correspondence of the imprisoned person.

In December 2022, a reply was provided to the applicant on their submission to municipal police regarding compensation for non-material damage. The person considered that the provisions of the Law on Compensation of Losses Caused by Public Administration Institutions were not complied with, and non-material damage was caused. The person asked the Ombudsman to provide an opinion regarding principle of good administration. The Ombudsman emphasised that the concept of the principle of good administration is defined in Article 10(5) of the State Administration Structure Law, as well as in Article 41(1) of the Charter, and includes three elements (openness, data protection, fair procedure within a reasonable time). Whereas Article 41(2) of the Charter states that the right to good administration includes the right of a person to be heard before a decision is taken and the right of access to the file, as well as the duty of the institution to state reasons for its decisions. Thus, the principle of good administration requires, by its very nature, a favourable and dignified attitude of the institution towards a private individual, which includes not only the obligation to act in accordance with regulatory enactments, but also to constantly improve the quality of the services provided to a person, bearing in mind that the public administration serves the population. Namely, the institutions should apply this principle when

translating legal provisions, filling the legislative 'gaps', as well as drawing up or improving laws and regulations.

In December 2022, the Ombudsman was requested whether the victim has a subjective right to request that the person liable for the offence be punished. The Ombudsman informed that fundamental human rights were listed in Chapter 8 of the Satversme of the Republic of Latvia. Among those fundamental rights, there is no right to require the offender to be punished in a certain way or to determine the amount of the penalty. The Convention, the Universal Declaration of Human Rights and the Charter also provide for this type of right.

In 2022, the reply to the prisoner concerning the alleged violation of the right to property referred to Article 17 of the Charter.

In June 2023, a reply was given to the person who stated that, after bodily injury at the State Police station, a decision was taken to initiate administrative infringement proceedings and the person was recognised as a victim. In those proceedings, the State Police decided to impose a fine on the person who caused the bodily injury. The above-mentioned decision was upheld by a senior official of the State Police. However, the district court decided to annul the decision of the State Police and to close the administrative infringement case. On the other hand, the Regional Court refused to initiate appeal proceedings. Reference to Article 41 of the Charter on good administration.

In 2021, the person asked the Ombudsman to provide an explanation as to whether the delay of the person directing the proceedings when disclosing the data to be retained should be regarded as delaying criminal proceedings. It was also asked whether negligence is visible in the actions of the person directing the proceedings. From the point of view of human rights, the right to a timely examination of the case is protected by the first sentence of Article 92 of the Satversme of the Republic of Latvia, Article 6(1) of the Convention, as well as Article 47(2) of the Charter. According to the European Court of Human Rights, the purpose of the State's obligation to ensure that the case is dealt with in a timely manner is to prevent excessive legal uncertainty and to maintain confidence in the effectiveness and credibility of the judicial system.⁸ In assessing the proportionality of the terms of adjudication of a case, the ECHR shall take into account such criteria as the nature and complexity of the case, the actions of the participants and the

⁸ ECHR, *Bottazzi v. Italy* &.22, 28 July 1999

competent State authority, as well as the importance of the interests involved in the proceedings and the urgency of actions.⁹ It has been pointed out that the timeliness of investigations and proceedings can only be assessed objectively by consulting the materials of the relevant criminal case.

In May 2023, a reply was provided to the applicant stating that the person was provided with criminal case materials containing the personal data of the wife (name, surname, personal identity number). The person considered that the investigator had thus unlawfully processed the sensitive data of his wife. The Charter distinguishes between an individual's right to privacy (Section 7) and the right to the protection of personal data (Section 8). However, Article 8(2) of the Charter also provides for the possibility of fair processing of personal data for statutory purposes. Thus, a person's right to respect for private life may be restricted, including when dealing with personal data.

In April 2023, a person applied to the Ombudsman informing that they had suffered bodily injury because of a conflict. Given that the person himself had also caused bodily injury, two criminal proceedings were initiated, i.e., for bodily injuries towards the applicant and caused by them. In the first criminal proceedings, a person was found guilty and was held liable for minor bodily injury (Section 130(2) of the Criminal Law). The second criminal proceedings for inflicting bodily injury to a person were terminated. The person considered that the rights guaranteed in Article 91 of the Satversme, as well as the right to a fair trial, were thereby violated. Article 21 of the Charter of Fundamental Rights of the Council of Europe mentions, in addition to those grounds of discriminatory treatment, differences of treatment based on genetic features, origin, disability, age and sexual orientation. The submission did not contain any evidence that a person had been treated differently based on these criteria. Consequently, the present case could not be seen in the context of the prohibition of discrimination.

In another submission, the applicant informed that he had paid the penalty for the violation of road traffic regulations but did not appeal against the court judgment due to lack of resources and lack of faith. The applicant considered that the principles of the protection of legitimate

⁹ ECHR, *Estrikh v. Latvia*, 18 January 2007, &138

expectations and of good administration were not respected in the proceedings. In the reply of April 2023, the Ombudsman referred to Article 41 of the Charter.

Concrete examples

Example 1

Type of application of the Charter: Advisory functions and legal scrutiny

Date of application and institution proposed: a letter of 15 June 2023 to the Parliamentary Committee on Defence, Home Affairs and Corruption Prevention of the Republic of Latvia on proposals for the second reading of the draft law “Amendments to the Law on State Border Guard”.

A detailed description of the facts, including the legal question:

It was planned to supplement the Section 15(1) of the draft law on the State Border Guard with the following wording: “to prevent a person from entering the country at a place and time not intended for that (if necessary, providing primary security in accordance with the possibilities), if there are no objectively justified circumstances regarding the immediate need for entry.” The Ombudsman proposed the following wording: “not to allow a person to enter the country at a place and time not intended for that (if necessary, providing primary security in accordance with the possibilities), except for situations where there are objectively justified circumstances regarding immediate need for entry, or the person, while in the territory of Latvia, has applied for asylum”.

The Ombudsman’s proposal was designed to eliminate the non-conformity of the proposed regulation with the rules of the European Union. Reference was made to the arrangements for granting access to the asylum procedure in EU Member States by reference to Directive 2013/32/EU of the European Parliament and of the Council. The Ombudsman stressed that EU law not only provides for protection from collective expulsion and includes the principle of non-refoulement, but also establishes the right to asylum. They are regulated not only by secondary legislation, but also by the Charter, which is a primary law. The Charter is directly applicable in situations where EU law applies, including regarding migration and asylum. The Ombudsman referred to Articles 18 and 19 of the Charter. The letter noted that the CJEU assesses national

legislation not in relation to the consequences it has for a particular individual, but in abstract terms, through a prism of EU law. Thus, the Ombudsman emphasised that Latvia, as an EU Member State, must ensure compliance of its regulatory framework with both the European Convention on Human Rights and EU law.

The Ombudsman invited the Saeima to find a solution to this difficult situation within the framework of the rights and mechanisms offered by the EU in accordance with the Charter, Directive 2013/32/EU, and the case-law of the CJEU.

Result: Although the Ombudsman's proposal to improve the legal framework was not supported, policy makers and the public were informed about the importance of EU law in the field of migration.

Reference: [Ombudsman's opinion on amendments in the State Border Guard Law](#) (available in Latvian)

Example 2

Type of application of the Charter: Advisory functions and legal scrutiny

Date of application and institution proposed: opinion of a private individual in April 2021 in the verification procedure on freezing of proceeds of crime (the individual does not have the right to appeal to a court an order for confiscation of property).

A detailed description of the facts, including the legal question:

Recital 38 of Directive 2014/42/EU states that this Directive respects the fundamental rights and observes the principles recognised by the Charter and the Convention, as interpreted by the case-law of the European Court of Human Rights. This Directive should be implemented in accordance with those rights and principles. One of the fundamental rights enshrined in Article 47 of the Charter is the right to a fair trial, which enshrines the right to an effective remedy for everyone whose rights and freedoms guaranteed by the law of the Union are violated. They provide that everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. On the other hand, under Article 17 of the Charter, everyone has the right to own, use and dispose of lawfully acquired property and to order him or her in the event of his or her death. No one may be deprived of their property unless it is necessary in the public interest and in the cases and under the conditions laid down by law,

provided that fair compensation is paid in good time for the damage. According to Article 2(4) of Directive 2014/42/EU, confiscation is the final deprivation of property ordered by a court in connection with a criminal offence. Article 8(1) of Directive 2014/42/EU provides that 'Member States shall take the necessary measures to ensure that persons affected by the measures provided for in this Directive have the right to an effective remedy and to a fair trial to preserve their rights'. Paragraph 6 provides that 'Member States shall take the necessary measures to ensure that any confiscation order is reasoned and that the order is communicated to the person concerned. Member States shall ensure that the person subject to confiscation has an effective possibility of appeal to a court against the confiscation order.' It should be emphasised that protective measures in confiscation proceedings pursuant to Article 4(2) of Directive 2014/42/EU also apply to cases where separate proceedings are distinguished from the main criminal proceedings. As can be seen from the explanatory memorandum to Directive 2014/42/EU, the Directive contains specific safeguards and remedies to ensure an adequate level of protection and respect for fundamental rights. One of them is the possibility to challenge any decision concerning property. Article 8 of Directive 2014/42/EU, on the other hand, makes it clear that this Article introduces minimum safeguards at European Union level. The purpose of those safeguards is to guarantee respect for the presumption of innocence, the right to a fair trial (including the principle of 'ne bis in idem'), the possibility of an effective judicial remedy and the right to be informed of how to exercise that right.

Result: The individual had also referred the matter to the Constitutional Court. Accordingly, the Ombudsman has also provided his opinion to the Constitutional Court.

How the Charter influenced the process: The Latvian regulatory framework and Directive 2014/42/EU, transposed therein, have been translated in accordance with Article 47 of the Charter.

Reference: [Ombudsman's opinion in the verification procedure on the right of a person to appeal a decision on the confiscation of property](#) (available in Latvian)

Example 3

Type of application of the Charter: Advisory functions and legal scrutiny

Date of application and institution proposed: 22 April 2022, opinion to the Constitutional Court

A detailed description of the facts, including the legal question:

By decision of the Constitutional Court, the Ombudsman was recognised as the summoned person in the case examining the compliance of Section 631(3) of the Criminal Procedure Law with the first sentence of Article 92 of the Satversme. Nature of the case: the applicants indicated to the Constitutional Court that it was not envisaged to appeal against the decision of the regional court regarding the recognition of property as criminally acquired in criminal proceedings. The applicants referred to the incorrect transposition into Latvian legislation of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014. The Ombudsman drew the attention of the Constitutional Court to that this issue of dispute had already been in the sight of the Ombudsman since 2020, when the verification procedure was initiated. In the legal basis, the Ombudsman stated that recital 38 of Directive 2014/42/EU states that this Directive respects the fundamental rights and observes the principles recognised by the Charter and the Convention. This Directive should be implemented in accordance with those rights and principles. One of the fundamental rights enshrined in Article 47 of the Charter is the right to a fair trial. Article 47 of the Charter states that everyone whose rights and freedoms have been violated has the right to an effective remedy. They provide that everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. The Ombudsman emphasised that, as can be inferred from Article 8(6) of the Directive, Member States should ensure that the person against whom the deprivation of property is sought has effective access to judicial review of the confiscation order. Thus, the Ombudsman pointed out that according to the current regulation of the Criminal Procedure Law, the decision on confiscation of property could not be appealed. Accordingly, judicial proceedings in accordance with Article 92 of the Satversme were not ensured.

Result: On 31 January 2023, the Constitutional Court adopted a decision to refer questions to the Court of Justice of the European Union for a preliminary ruling in case No. 2021-44-01 “On Compliance of Section 631(3) of Criminal Procedure Law with the First Sentence of Article 92 of the Satversme of the Republic of Latvia”.

Article 267 of the Treaty on the Functioning of the European Union establishes a procedure for cooperation between the Constitutional Court and the Court of Justice of the European Union, in which the Court of Justice of the European Union provides the Constitutional Court with a useful answer that would allow it to resolve the specific constitutional complaint.

In the present case, the Constitutional Court has established the need to refer questions to the Court of Justice of the European Union for a preliminary ruling on the interpretation of the Charter, Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union and Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property.

How the Charter influenced the process: The Latvian regulatory framework and Directive 2014/42/EU, transposed therein, have been translated in accordance with Article 47 of the Charter.

Reference: [Ombudsman's opinion to the Constitutional Court on compliance of the second sentence of Section 631\(3\) of the Criminal Procedure Law with the first sentence of Article 92 of the Constitution of the Republic of Latvia](#) (available in Latvian)

Example 4

Type of application of the Charter: Advisory functions and legal scrutiny

Date of application and institution proposed: 15 June 2020, application to the Constitutional Court.

A detailed description of the facts, including the legal question:

The Ombudsman applied to the Constitutional Court on compliance of Para 13 of Cabinet Regulation No. 1250 "Regulation Regarding State Fee for Registering Ownership Rights and Pledge Rights in the Land Register" with Articles 91, 105 and 110 of the Satversme. According to these provisions, there was a different amount of the State fee for spouses (0.25 % of the value of the immovable property) and for the other heirs (7.5 % of the value of the immovable property). Thus, same-sex persons who were actually spouses of the estate-leaver were placed in a different and less favourable position than the spouses.

The Cabinet of Ministers indicated the following to the Ombudsman. Matters of marriage or partnership are not regulated at European Union level. The right to marry and the right to form a family are guaranteed in accordance with the national law governing the exercise of that right¹⁰. The Explanatory Notes to Article 9 of the Charter emphasise that the sex of persons entitled to marry is not intentionally mentioned, i.e., that this right may be extended to States which recognise measures other than marriage as the basis for the formation of the family. That provision therefore neither prohibits nor imposes an obligation to grant marriage status to a union of persons of the same sex¹¹. Consequently, there may be significant differences between the legal system of each Member State in the regulation of this issue and each State has the right to develop a model of family law that is consistent with its historical development and cultural values. Articles 32 to 38 of the Civil Code lay down several obstacles to marriage, including the Civil Law prohibiting a new marriage to a person who is already married, as well as marriage between relatives and between persons of the same sex. The prohibitions laid down in the Civil Code are clear and unambiguous and cannot be interpreted contrary to the principle of the rule of law. Moreover, these norms fully comply with Article 110 of the Satversme and do not violate any of the provisions of the Convention or other international agreements binding on Latvia.

The Cabinet concluded that there is no regulation on same-sex marriage in the Latvian legal system, i.e., Latvian law does not provide for the right to enter into same-sex marriage, nor does it provide for the right to register co-habitation of people of one or different sexes. Moreover, it is not apparent from the ECHR case-law that fact constitutes a breach of the Convention and that all Member States are under a general obligation to introduce such concepts into their legal systems.

In his justification, the Ombudsman indicated to the Constitutional Court that the specific case had to be assessed in conjunction with the second sentence of Article 91, the first, second and third sentences of Article 105 and the first sentence of Article 110 of the Satversme.

The ECHR has consistently found a violation of Article 8 of the Convention in cases in which national legislation, without any objective justification, puts same-sex families at a disadvantage as regards the exercise of certain rights compared to partners of different sexes. In its judgment of 21

¹⁰ [Article 9 of the Charter of Fundamental Rights of the European Union](#)

¹¹ Comments to the Constitution of the Republic of Latvia. Chapter VIII. Fundamental human rights. Team of authors under the scientific guidance of Prof. R. Balodis. Riga: Latvijas Vēstnesis 2011, p. 587.

July 2015 in case *Oliari and Others v. Italy*, the ECHR concluded that a State may have a positive obligation under Article 8 of the Convention to provide a legal framework for the recognition and protection of same-sex family relationships.

Article 91 of the *Satversme* states that ‘all people in Latvia are equal before the law and the court. Human rights shall be exercised without discrimination.’

Article 21 of the Charter prohibits discrimination on the grounds of sexual orientation, and the ECHR has¹² also pointed out in its judgments the positive obligation of the State to protect the families of same-sex couples under Article 14 of the Convention (prohibition of discrimination on grounds of sexual orientation). Therefore, the prohibition of discrimination on the grounds of sexual orientation is also binding on Latvia.

Result: when reviewing the case, the Constitutional Court found that the regulation of the State fee applicable to the same-sex partner of the estate-leaver to whom a family had been established was incompatible with the *Satversme*. The Constitutional Court noted that the legal regulation of family relations and the legal framework of economic and social protection and support measures of the family should form a unified and coherent system of legal regulation. Therefore, the Cabinet of Ministers must ensure that after the entry into force of the legal framework for family relations of same-sex partners, the legal framework for the economic and social protection and support of the family included in the Cabinet Regulation is consistent with the new legal framework for family relations, as well as in accordance with the general principles of law and other norms of the Constitution, international and European Union law.

How the Charter influenced the process: In this case the Ombudsman referred to the Charter to ground inadmissibility of discrimination. The Constitutional Court in its judgment did not refer to the Charter.

Reference: [Ombudsman’s application to the Constitutional Court on Compliance of Para 13 of the Cabinet Regulation of 27 October 2009 No. 1250 “Regulation Regarding State Fee for Registering Ownership Rights and Pledge Rights in the Land Register” with Article 91, Article 105, and Article 110 of the Satversme of the Republic of Latvia](#) (available in Latvian)

¹² [Article 21 of the Charter of Fundamental Rights of the European Union, 26.10.2012, C326/391](#)

Example 5

Type of application of the Charter: advisory functions and legal scrutiny

Date of application and institution proposed: 29 March 2021, Ombudsman's reply to a person on alleged discrimination and violation of the right to property in the process of privatisation of apartment property.

A detailed description of the facts, including the legal question: The infringement arises because the Law on Privatisation of State and Local Government Residential Houses (Privatisation Law) provides that the privatisation objects referred to in Sections 7 and 8 of this Law have the right to privatise holders of privatisation certificates who are citizens of Latvia, non-citizens or persons who have received a permanent residence permit. The Ombudsman asked for an opinion from JSC "Public Asset Manager Possessor" and the Ministry of Economics.

In its opinion, the Ministry of Economics emphasised that to provide a comprehensive opinion on the conformity of the legal norm with the higher Latvian and European Union legal norms in the hierarchy of laws and regulations, it is necessary to analyse the background to the origin of the legal norm, the circumstances of its adoption, as well as the scope and limits of interpretation of the legal norm. It is necessary to assess the legislator's right to determine the specific scope of the law, the purpose of the legislative act, the procedure for adopting and applying it, including in relation to international law and the practice of other EU Member States.

It is necessary to carry out an analysis of the initial motives of the legal framework with an overview of the initial phase of the restoration of the independence of Latvia in the early 1990s. In this context, it is necessary to analyse the legislation adopted during this period on the conversion of property from public to private property, which required the initiation of the land reform, denationalisation, and privatisation process by transferring public property to private individuals to correctly apply the principle of equality.

In his opinion, the Ombudsman stressed that Article 345 of the consolidated version of the TFEU provides that the Treaties on the EU and its functioning in no way affect the laws of the Member States governing the system of property ownership¹³. This means that the regulation of ownership

¹³ Article 345 of [Consolidated version of the TFEU](#) (previously Article 295 of TEC).

is left to the competence of the Member States. The EU therefore has limited competence to intervene in these matters¹⁴ ‘the Charter of Fundamental Rights of the European Union, which has legally binding force, affirms the fundamental rights guaranteed by the Convention and as they result from the constitutional traditions adopted in the Member States. The Charter does not extend the scope of Union law beyond the powers of the Union and does not establish any new powers or tasks for the Union, nor amend the powers and tasks conferred on it by the Treaties.’ Considering the need for conversion, the Saeima, when ratifying the Convention, made a disclaimer in the law “On the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and its Protocols 1, 2, 4, 7 and 11”¹⁵, with Article 2 stating that the requirements of Article 1 of Protocol 1 of the Convention (right to property) will not apply to the reform of property¹⁶, which regulates the privatisation of property that was nationalised, confiscated, colligated or otherwise unlawfully expropriated during the annexation by the USSR, or the payment of compensation to former owners or their heirs, as well as the privatisation of agricultural enterprises, fishermen’s collective farms (kolhozi) and state and municipal property.

The European Court of Human Rights has recognised that property has an inherent social function, the objective of which is to strike a fair balance between the interests of society and the fundamental rights of the individual.¹⁷ The European Court of Human Rights has repeatedly stated that the concepts of ‘public interest’ and ‘public interest’ are clearly to be interpreted more broadly than those ‘necessary in a democratic society’ and that restrictions are acceptable.¹⁸ The regulation of EU ownership issues is left to the competence of the Member States.

The Ombudsman pointed out that the contested norm was not in contradiction with Article 17(1) of the EU Charter of Fundamental Rights. Natural persons – the rights of an EU citizen – are neither restricted nor impaired as a general rule. The contested norm determines the range of subjects

¹⁴ Van Erp, S., Akkermans, B., 2010. European Union property law. In: C. Twigg-Flesner, ed., *The Cambridge Companion to European Union Private Law*. Cambridge: Cambridge University Press, pp. Paragraphs 173-186

¹⁵ [Law “On the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and its Protocols 1, 2, 4, 7 and 11”](#) (available in Latvian)

¹⁶ [Latvijas Vēstnesis](#), 143/144, 13.6.1997; Reporter of the Saeima and Cabinet of Ministers of the Republic of Latvia, 14, 24.07.1997.

¹⁷ Case of *Hutten-Czapska v. Poland* (application no. 35014/97): Judgment of the European Court of Human Rights of 19 June 2006.

¹⁸ BEDDARD R. *Human rights and Europe*. Third edition. Cambridge: Cambridge University Press, 1993 p. 105

only in relation to the specific and one-off privatisation process of the residential stock, which is taking place within the framework of the property reform, and EU law recognises the competence of the Member States in regulating specific issues of ownership. In addition, an EU citizen who has received a permanent residence permit in the Republic of Latvia by acquiring certificates may become subject to the Privatisation Law and is entitled to privatise the privatisation objects referred to in Sections 7 and 8 of the Privatisation Law.

The content of Article 18 of the TFEU would go beyond the specific provisions (e.g., Article 45 of the TFEU), which already contain the prohibition of discrimination on grounds of nationality and provide for the possibility of restricting the specific fundamental freedom of the EU.¹⁹

Consequently, the State is entitled to lay down criteria and restrictions regarding persons, the existence and relevance of certain qualifications to a particular position, criteria for persons who may hold the post of civil servant, serve in the army, apply for property in the process of conversion of property, etc.

Result: The Ombudsman concluded that the contested norm should be considered as directly applicable and compatible with the Satversme and the international obligations of the Republic of Latvia.

How the Charter influenced the process: The Charter provided a precise legal analysis

Reference: Reference included in the reply to an individual is made to Article 17(1) of the Charter.

Example 6

Type of application of the Charter: Advisory functions and legal scrutiny

Date of application and institution proposed: 15 June 2020 reply to an individual.

A detailed description of the facts, including the legal question:

The answer was given to an individual who complained about the fine imposed for the administrative violation provided for in the Road Traffic Law. The person considered that the decision of the State Police was formal and based on false assumptions.

¹⁹ Tridimas T. *The General Principles of EU Law 2nd Edition* – Oxford: Oxford University Press, 2006, p. 121.

In his reply, the Ombudsman pointed out the following. Pursuant to Article 10(5) of the Law on the structure of public administration, the principle of good administration includes openness to private individuals and society, data protection, the implementation of fair procedures within a reasonable time and other provisions aimed at ensuring that the public administration complies with the rights and legal interests of a private person. On the other hand, within the meaning of the first paragraph of Article 41 of the Charter, the right to good administration ensures that the matter is dealt with impartially, fairly and within a reasonable time. That right shall include the right of every person to have access to the file relating to him or her. Accordingly, in the context of the principle of good administration, the actions of officials of the State Police may be examined by sending the requested video recordings in the administrative violation case for a long time, showing the moment when the violation was committed.

In accordance with the third paragraph of Article 41 of the Charter, everyone has the right to compensation for damage caused by staff of the institution in the course of their duties. The third sentence of Article 92 of the Satversme of the Republic of Latvia also provides for the right of a person to adequate compensation in case of unjustified violation of rights. In turn, Article 17(2) of the Law on Compensation for Damage Caused in Criminal Proceedings and Administrative Violations Proceedings lays down the right of a person to claim compensation to an institution whose actions during administrative violation proceedings have caused losses to the person.

The Article 6 Para 3 of the Convention lays down the minimum rights of the accused, i.e., to receive information about the accusation, to prepare for the defence, to interrogate witnesses, as well as to receive the assistance of an interpreter and a defence counsel. However, the application does not contain any information that you have been denied these rights during the administrative infringement proceedings.

Result: In essence, only the opinion of a person and the vision of institutions (police, court) regarding the existence of the composition of the administrative violation in the events of 9 December 2020 differ. However, the rights referred to in Article 92 of the Satversme, Article 47 of the Charter and Article 6 of the Convention shall not be interpreted as an obligation for an institution to take a decision of desirable or favourable content for a person.

How the Charter influenced the process: In the statement of reasons, reference is made to Article 41(3) and Article 47 of the Charter.

Reference: Reference to the Charter is included in the reply to an individual

Example 7

Type of application of the Charter: Advisory functions and legal scrutiny

Date of application and institution proposed: 16 May 2023 Ombudsman's opinion in the verification procedure addressed to the Ministry of Finance, Ministry of Education and Science, the Latvian Council of Science, and the University of Latvia regarding violation of the prohibition of discrimination on grounds of sex in the use of the European Union Structural Funds.

A detailed description of the facts, including the legal question:

Upon person submission, the Ombudsman began investigating the situation regarding a possible violation of the prohibition of discrimination on grounds of sex against women – scholars within the framework of projects financed by the EU Structural Funds, if they are denied access to maternity-related leave provided for in the Labour Law. Regulation No1303/2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (hereinafter – Regulation No 1303/2013). Article 65 of Regulation 1303/2023 (project end date) translated in conjunction with Article 7 of that Regulation (gender equality). Regulation 1303/2013 provides for a specific deadline. To submit the eligible expenditure to the European Commission.

Within the verification procedure, the national and EU regulatory framework affecting the principle of gender equality, the role of women scholars and the conflict of Articles 7 and 65 of Regulation 1303/2013, as well as the applicability of the abovementioned regulatory framework to Latvia – the possibilities for women-scientists to receive maternity-related leave were assessed. There is an increase in the number of women who obtain a doctorate and can accordingly start their careers in science in reproductive age. As the European Parliament has pointed out, the lack of work-life balance is one of the reasons why women leave their careers in science.

Regulation 1303/2013 was interpreted in the light of Articles 21 and 51 of the Charter. The test case highlights that gender equality as a principle is one of the oldest fundamental values of the EU, already enshrined in the Treaty of Rome in 1957. At present, the principle of gender equality is enshrined in Article 2 of the Treaty on European Union, Articles 8 and 10 TFEU and Article 21 of the

Charter. Furthermore, in the context of the Charter, particular emphasis should be placed on Article 51 of the Charter, which states that the provisions of the Charter (i.e. the principle of gender equality) must apply to both the EU institutions and the Member States when they are implementing EU law, such as ensuring the implementation of EU structural funds in line with the requirements of Regulation (EU) No 1303/2013.

The principle of gender equality also follows from Article 91 of the Satversme. The opinion highlights that the EU has paid particular attention to gender equality in employment and education through the development of several directives²⁰ that affect the national obligation to provide maternity leave. In addition, the EU has pointed out that it is clear from the CJEU case-law that unfavourable treatment of a woman with pregnancy or maternity constitutes discrimination on grounds of sex before a court. The Court has consistently held that it is legitimate, in the context of the principle of equal treatment, to protect a woman's biological condition during pregnancy and maternity and to introduce maternity protection measures as a means of achieving independent equality.²¹

In the verification procedure, the Ombudsman concluded that the principle of gender equality is important both at EU and national level, and that non-compliance with it is linked to a violation of the prohibition of discrimination. While the Charter obliges the principle of gender equality both in the drafting and implementation of EU legislation at EU level and in the Member States, and consequently the principle of gender equality is enshrined in Regulation 1303/2013, its implementation may be jeopardised by the deadline set out in Article 65 of Regulation 1303/2013.

Result: The Ombudsman concluded that the Latvian Council of Science, by significantly influencing the duration of parental leave, violates the limits of its competence. The Ombudsman stressed that pregnancy puts female scientists at a disadvantage when it comes to taking parental leave.

Accordingly, a violation of the prohibition of indirect discrimination on grounds of sex was established by preventing a female scientist from taking parental leave in accordance with the provisions of the Labour Law.

²⁰ E.g. [DIRECTIVE 2006/54/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation \(recast\)](#)

²¹ *ibid*

How the Charter influenced the process: The statement of reasons refers to Articles 21 and 51 of the Charter.

Reference: [Ombudsman's opinion in the verification procedure on the violation of the prohibition of discrimination based on gender in the use of European Union structural funds](#) (available in Latvian)

Conclusions

1. The lawyers of the Ombudsman's Office in the legal analysis primarily use the European Convention for the Protection of Human Rights and Fundamental Freedoms.
2. The Charter is used in the interpretation of European Union law.
3. Knowledge of the Charter and the use of the Charter should be extended.
4. The use of the Charter in the legal analysis would ensure greater implementation of the Charter in the Latvian legal space.