

November, 2023

Charter of Fundamental Rights use by the Ombudswoman

Prepared by the Office of the Ombudswoman of Croatia

Contents

EXECUTIVE SUMMARY	2
INTRODUCTION	2
OVERVIEW OF HOW NHRI USES THE CHARTER IN ITS WORK.....	3
CONCRETE EXAMPLES	4
Complaints handling and litigation.....	4
Advisory functions, including impact assessment and legal scrutiny	7
Human rights monitoring.....	8
Reporting	9
Human rights education.....	10
Awareness raising	12
CONCLUSIONS	12
ANNEX: TEMPLATE FOR EXAMPLES OF CHARTER USE.....	13

EXECUTIVE SUMMARY

This paper identifies practices of the Ombudswoman in relation to the Charter of Fundamental Rights.

INTRODUCTION

The Charter of Fundamental Rights is a legally binding instrument that applies to the EU institutions. In addition, the Charter applies to national authorities in Member States “only when they are implementing EU law”.

This means that national, regional and local administrations are central to promoting and protecting Charter rights. The Commission plans to work hand in hand with Member States’ national and local authorities to ensure the full application of the Charter and of EU laws that promote and protect the rights it enshrines.

However, at the national level there is insufficient awareness of the Charter. Hence, the European Commission adopted The EU strategy to strengthen the application of the Charter 2020–2030, which recognized important role national human rights institutions (NHRIs) can play in ensuring compliance with the Charter at the national level.

Additionally, the European Commission’s 2018 annual report on the application of the Charter highlights the roles of NHRIs and equality bodies in raising awareness of the “Charter rights and ensuring their effective implementation on the ground”. The Council Conclusions adopted on the occasion of the 10th anniversary of the Charter, in October 2019, note that NHRIs “play a crucial role in the protection and promotion of fundamental rights and in ensuring compliance with the Charter.

This stems from the fact that NHRIs have a broad state mandates, which include monitoring, advising government and parliament, complaints-handling, reporting, human rights education, training and awareness raising. These functions are mutually reinforcing for the implementation of fundamental rights.

Croatian Ombudswoman is a commissioner of the Croatian Parliament responsible for the promotion and protection of human rights and freedoms, independent and autonomous in her work. The Croatian Ombudswoman has the following mandates:

- Ombuds mandate – maladministration
- national equality body (NEB)
- A status national human rights institution (NHRI)
- National Preventive Mechanism for the protection of the persons deprived of their liberty (NPM)
- an external reporting of irregularities – whistle-blowers’ protection

OVERVIEW OF HOW NHRI USES THE CHARTER IN ITS WORK

In the Croatian context, the level of awareness on the Charter of Fundamental Rights is rather limited. So, in order to increase visibility of the Charter at the national level the Ombudswoman implemented a project “Judging the Charter”, from 2016 to 2018.

The project *Judging the Charter*, aimed at increasing competencies of judges and other legal professionals in relation to the Charter of Fundamental Rights of the European Union, in particular at sharing knowledge, how judiciary and academia are interpreting crucial questions relating to the applicability of the Charter and the rights and principles enshrined by the Charter. Additional focus of the project was on the role of Charter rights in asylum cases.

The project was implemented in cooperation with the Institute for Human Rights Ludwig Boltzmann, Instituto di Studi Giuridici Internazionali (CNR-ISGI, Rom), the Institute for Law and Society (INPRIS, Warschau), the Center for European Constitutional Law (CECL, Athen) and the Federal Ministry for Justice (Austria) and the Croatian Ombudswoman Office (Zagreb),. It lasted for two years until August 2018 and included the following components:

1. Judicial training and development of training materials: The project provided an overview of what is already there in terms of training materials on the Charter. Through the project website was developed to function as a portal providing access to all materials directly or via a link. E-learning tools will aim at acquainting with the topic in an interactive way and at enabling users to ‘test’ the potentials the Charter might provide. Trainings for judges and legal professionals on questions of general interest as well as on concrete legal fields like discrimination, labour law, family law of social rights were organised in all partnering countries (AT, EL, HR, IT, PL, RO).
2. The Charter and the right to asylum: This component of the project had a focus on the role of the Charter in the field of asylum. Training materials on the Charter and its applicability in judiciary practice in the field of asylum law were developed and trainings in each partnering country were implemented.
3. Sharing experience and dissemination: Two working conferences for judges and legal professionals in Vienna and in Athens aimed at providing a platform for sharing experiences in applying Charter rights were organized.

Furthermore, in order to increase and strengthen its own capacity, within the current project, the Ombudswoman organized the training on the Charter for the staff of institution. These staff members are working on individual cases (complaints-handling), preparing opinions during the legislative procedure and looking at the impact of proposed laws on human rights, monitoring and reporting (by preparing input for the Annual Report and Specialized Reports) as well as taking part in human rights education. The training was held by the judge from the Constitutional court.

In considering the main hindrances to making more use of the Charter in day to day work of the Ombudswoman, it is important to highlight that the Charter is a rather complicated document with a limited scope. In the context different legal sources the Ombudswoman uses in her work, there is a lack of understanding of the Charter’s added value, compared with international instruments such as the European Convention on Human Rights or national legal sources.

CONCRETE EXAMPLES

In the following pages, we will share some examples of our work ([use template in annex](#)).

Complaints handling and litigation

NHRI	<i>Ombudswoman of the Republic of Croatia</i>
Type of Charter use	<i>Click as appropriate</i> <ul style="list-style-type: none"> ○ Complaints handling and litigation
Date of use/decision/event	June 2023
Detailed description of facts (of the case, the event, the file etc.)	<p>As of 1 April 2023, the Amendments to the Compulsory Health Insurance Act came into force and brought about changes for the healthcare system, as well as significant changes for some insured persons. Specifically, for insured individuals falling under the category of unemployed as defined by Article 7, paragraph 1, item 13 of the Act, a new obligation was introduced.</p> <p>If they were not registered in the records of the unemployed by the Croatian Employment Service, the obligation of personal reporting to the Croatian Health Insurance Fund was introduced in order to verify the circumstances on the basis of which their status was established - for the first time until 29th June 2023 and then once every three months. In addition, the registration of temporary departure from the Republic of Croatia (regardless of residence) terminates the status of insured person.</p>
Legal question	<p>Given the large number of complaints received by the Ombudswoman pointed to discriminatory effects of the Act, before the expiration of the first deadline for personal reporting (29th June 2023), the Ombudswoman submitted a request to the Constitutional Court of the Republic of Croatia for an assessment of the constitutionality of the provisions of amendments of the Act related to the obligation of personal reporting to the Croatian Health Insurance Fund (CHIF). According to the data of the CHIF from June 2023, this obligation related to a total of 275,542 insured persons, and from 29th June 2023 105,982 insured persons lost their compulsory insurance.</p> <p>The Ombudswoman pointed out that this is an obligation that is contrary to the prohibition of discrimination from the Constitution of the Republic of Croatia and the Anti-discrimination Act, because all persons</p>

	<p>will not be able to personally access the CHIF due to their disability, health status and socio-economic status, particularly if they live in places away from the closest organisational unit of the CHIF and that based on these characteristics they are placed in a disadvantaged and unequal position.</p> <p>In addition, this obligation, including the way it was introduced, undermines the constitutional guarantees of the right of appeal, the right to leave and go abroad, special care for persons with disabilities, the right to health and youth protection and the availability of education on equal terms.</p> <p>The Ombudswoman pointed out that the loss of health insurance will lead to a violation of the right to health and significant material obligations (and risk of debt) for those who cannot be insured on another basis financed from the budget, because they will have to pay contributions independently, while people affected by this change are unemployed.</p> <p>Also, due to the fact that the decision on losing one’s insurance is not automatically issued but only upon request, the right to a legal remedy is threatened, and citizens are put in a situation of unexpected costs because they will only find out about the deregistration during treatment.</p> <p>We supplemented the request in September, following a number of complaints by persons who used the rights from the maternity and parental support system, who lost these rights by being signed off from the compulsory health insurance and we pointed out to the Constitutional Court the negative effects on the constitutional protection of maternity.</p>
Final outcome (of the case, the event, the file etc.)	Ongoing
Relevance of the Charter	<p>Discrimination is prohibited and rights, including the right to education, health care and to an effective remedy are also protected by the Charter of Fundamental Rights of the European Union, including EU citizens or nationals of EU Member States who have moved to the Republic of Croatia using freedom of movement.</p> <p>Article 21 Non-discrimination</p> <ol style="list-style-type: none"> 1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national

	<p>minority, property, birth, disability, age or sexual orientation shall be prohibited.</p> <p>Article 35 Healthcare Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.</p> <p>Article 14 (1) Right to education</p> <p>1. Everyone has the right to education and to have access to vocational and continuing training.</p> <p>Article 47, paragraph 1. Right to an effective remedy and to a fair trial</p> <p>Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.</p>
Reference	<p>https://www.ombudsman.hr/hr/pucka-pravobraniteljica-zatrazila-ocjenu-ustavnosti-izmjena-i-dopuna-zakona-o-obveznom-zdravstvenom-osiguranju/</p>

NHRI	<i>Ombudswoman of the Republic of Croatia</i>
Type of Charter use	○ Complaints handling and litigation
Date of use/decision/event	October 2023
Detailed description of facts (of the case, the event, the file etc.)	<p>A person complained that she did not receive a reply on the complaint of suspicion of irregularity, which she submitted, to the Environmental Protection and Energy Efficiency Fund (EPEEF).</p> <p>In their response authorities stated that they acted in accordance with the procedure prescribed by the common national rules for the operational Programme Competitiveness and Cohesion 2014-2020 v. 7.0 adopted by the Ministry of Regional Development and EU Funds on 4th December 2020 and the Handbook on the conduct for Intermediate body level 2 v. 5.0 from 7th July 2021 since neither the common national rules nor the Code of conduct prescribed the provision of feedback to applicants of suspected irregularities.</p>
Legal question	In accordance with the provisions of Article 46 of the Constitution of the Republic of Croatia, everyone has the right to send petitions and complaints, to make proposals to state and other public bodies and to receive an answer to them. Thus, the authority addressed by the citizen

	<p>is under an obligation to respond. This does not necessarily mean that the response will be positive for the citizen or that his or her petition, complaint or proposal will in any event be accepted by the competent authority and the extent of the response should be appropriate to the circumstances of the case.</p> <p>Furthermore, the provision of Article 141. the Constitution stipulates that the exercise of rights deriving from the <i>acquis</i> is equal to the exercise of rights guaranteed by the Croatian legal order (paragraph 1), that legal acts and decisions accepted by the Republic of Croatia in the institutions of the European Union are applied in the Republic of Croatia in accordance with the <i>acquis communautaire</i> (paragraph 2), that Croatian courts protect subjective rights based on the <i>acquis communautaire</i> of the European Union (paragraph 3) and that state bodies, bodies of local and regional (regional) units self-governments and legal entities with public authorities directly apply EU law (paragraph 4).</p>
Final outcome (of the case, the event, the file etc.)	<p>The Ombudswoman, after conducting the procedure, decided that there is an obligation for complainant to be informed of the outcome of the examination of their application.</p> <p>Therefore, in accordance with the powers laid down in Article 26 of the Ombudsman Act, the Ombudswoman recommend that, to the extent appropriate to the circumstances of the case, the institution should answer their petitions and recommended that the institution bring their future actions into line with that obligation.</p>
Relevance of the Charter	<p>Since the legal situation in question falls within the scope of EU law, the Ombudswoman point out that the Charter of Fundamental Rights of the European Union is applicable and that the authority is under an obligation to apply. The Ombudswoman underlined that the Charter stipulates that any person may contact the institutions of the Union in writing in one of the languages of the Treaty and must receive a reply in the same language.</p>
Reference	<i>n/a</i>

Advisory functions, including impact assessment and legal scrutiny

NHRI	<i>Ombudswoman of the Republic of Croatia</i>
Type of Charter use	○ Advisory functions, including impact assessment and legal scrutiny
Date of use/decision/event	April 2023
Detailed description of facts	The Ombudswoman took part in the consultation on draft checklists in the implementation of EU funds in relation to the effective application

(of the case, the event, the file etc.)	of the EU Charter of Fundamental Rights and the United Nations Convention on the Rights of persons with disabilities in EU Funds.
Legal question	The Ombudswoman was asked to give an opinion on the Checklist developed by the Ministry.
Final outcome (of the case, the event, the file etc.)	Opinion issued to the Ministry of Regional Development and EU funds
Relevance of the Charter	Charter of Fundamental Rights
Reference	n/a

Human rights monitoring

NHRI	<i>Ombudswoman of the Republic of Croatia</i>
Type of Charter use	○ Monitoring
Date of use/decision/event	June 2022
Detailed description of facts (of the case, the event, the file etc.)	<p>The Ombudswoman of the Republic of Croatia published an analysis on legal sources and standards regulating the conscientious objection due to different interpretations present in the public on this matter. This issue has been the subject of recent public debates in Croatia in the context of health care, especially the termination of pregnancy and right to abortion.</p> <p>The aim of the analysis is to contribute to discussion about its legal arrangement, implementation in practice and necessary improvements, and it includes an overview of international, European and national legal sources, as well as non-binding documents related to conscientious objection.</p> <p>According to the analysis, the Charter of Fundamental Rights of the European Union guarantees the right to freedom of thought, conscience and religion (Article 10), and the right to conscientious objection "is recognized in accordance with national laws governing the exercise of this right" (Article 10, paragraph 2). The Charter therefore protects the objection if/when/how it is recognized by the laws of the Member States. At the same time, it is emphasized that the right to conscientious objection should be balanced with the right to health care, which is also guaranteed by the Charter (Article 35). Additionally, according to the Charter, the scope and meaning of the rights it guarantees should be interpreted in accordance with the practice of the European Court of Human Rights and the Court of the European Union, therefore the right</p>

	to conscientious objection under EU law should be interpreted in the same way as the case law of these courts.
Legal question	As conscientious objection has been the subject of public debates in Croatia in the context of health care, especially the termination of pregnancy and right to abortion, the Ombudswoman prepared the analyses.
Final outcome (of the case, the event, the file etc.)	Analysis: Conscientious objection – legal sources and standards
Relevance of the Charter	Charter of Fundamental Rights - right to freedom of thought, conscience and religion (Article 10), the right to health care (Article 35).
Reference	n/a

Reporting

NHRI	<i>Ombudswoman of the Republic of Croatia</i>
Type of Charter use	○ Reporting
Date of use/decision/event	31 March 2022
Detailed description of facts (of the case, the event, the file etc.)	2022 and 2023 Annual Reports of the Ombudswoman to the Croatian Parliament include a specific chapter on good administration which was inspired by the Article 41 of the Charter of Fundamental Rights. It does not refer only to the implementation of the EU law, but it looks more broadly on how institutions approach the citizens.
Legal question	<p>Since citizens' trust in the institutions of the Republic of Croatia is low, the very broad mandate of the Ombuds institution and through citizens' complaints in various areas, give the Ombudswoman a good insight into the problems that citizens are facing – for the 2022 Report the Ombudswoman decided to present citizens' problems in exercising the right to good governance through a systematic and comprehensive approach – in a separate chapter.</p> <p>Considering that trust in institutions should and can be built, through increasing accessibility, transparency and efficiency of public institutions, the Ombudswoman analysed the problems identified in many areas together and offered solutions for the problems identified in the form of enforceable recommendations, implementation of which the institution believes would help restore and build trust in institutions.</p> <p>For example, complaints the Ombudswoman receives suggest that citizens do not have sufficient information on procedures and services of public law bodies or on possibilities of using remedies, since procedures and regulations are often complicated and are not often</p>

	<p>accompanied by understandable instructions and illustrations of procedures and mechanisms for exercising rights/services. Numerous amendments to regulations, rarely available in consolidated versions, make it difficult for citizens to invoke rights guaranteed by law, Regulation or administrative action.</p> <p>It is indicative that citizens are asking the Ombudswoman general questions about how to exercise a right, whom to turn to or complain about, how the process should look and the like, which indicates that public service bodies do not provide sufficient information or are not responsive at the same time, which calls into question the effective fulfilment of their role as citizens' services.</p>
Final outcome (of the case, the event, the file etc.)	Number of recommendations has been given to public authorities within this Chapter
Relevance of the Charter	Article 41 - Right to good administration
Reference	https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/

Human rights education

NHRI	<i>Ombudswoman of the Republic of Croatia</i>
Type of Charter use	○ Human rights education
Date of use/decision/event	2016-2018
Detailed description of facts (of the case, the event, the file etc.)	During this period the Ombudswoman, in cooperation with the Judicial Academy, organized a number of trainings for judges – part of the trainings was introduction to the Charter of Fundamental Rights and when does it apply, additional number of trainings was focused on asylum rights and application of the Charter in asylum procedures as well as on non-discrimination and access to justice.
Legal question	As the level of knowledge on the Charter among the judiciary was quite low at the time, the trainings aimed at raising their capacity to work with the Charter. The judges of Supreme Court and Ombuds staff as well as academics in the area of asylum and a judge from Administrative court conducted the trainings.
Final outcome (of the case, the event, the file etc.)	Apart from the trainings, the webpage was developed as the part of project activities with the overview of judgments in relation to the Charter as well as overview of available trainings materials and trainings at the moment.
Relevance of the Charter	/
Reference	https://charter.humanrights.at/legaldocument

NHRI	<i>Ombudswoman of the Republic of Croatia</i>
Type of Charter use	○ Human rights education
Date of use/decision/event	2019
Detailed description of facts (of the case, the event, the file etc.)	<p>In 2019, the Ombudswoman co-organised two trainings on the Charter in cooperation with the EU Agency for Fundamental Rights (FRA).</p> <p>One training was aimed at civil servants, focusing on policy and applicability of the Charter in legislative procedure, with a particular focus on Article 51 determining the field of application of the Charter. An Agency handbook entitled <i>Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level</i> was also presented as part of the training.</p> <p>The other one was aimed at NGOs, focusing on how to use the Charter in strategic litigation and how to communicate such cases.</p>
Legal question	<p>Applicability of the Charter in legislative procedure</p> <p>Charter and strategic litigation and how to communicate such cases</p>
Final outcome (of the case, the event, the file etc.)	<p>Increased capacity of civil servants to use the Charter in the legislative procedure</p> <p>Increased awareness of CSO on the Charter</p>
Relevance of the Charter	-
Reference	<i>European e-Justice Portal – Croatia’s’ best practices on the Charter</i>

Awareness raising

NHRI	<i>Ombudswoman of the Republic of Croatia</i>
Type of Charter use	○ Awareness raising
Date of use/decision/event	December 2023
Detailed description of facts (of the case, the event, the file etc.)	In order to increase the awareness among key institutions on the implementation of the fundamental rights enabling conditions in Croatia, the Ministry of Regional Developments and Eu Funds decided to publish the Charter of Fundamental Rights and UN Convention on the Rights of Persons with Disabilities with the foreword by the Ombudswoman and Ombudswoman for Persons with Disabilities.
Legal question	In her foreword, the Ombudswoman highlighted the importance of the Charter of Fundamental Rights for people working on the EU funds as well as highlighting the role of the Ombudswoman as a NHRI and NEB.
Final outcome (of the case, the event, the file etc.)	The publication, which should be available to staff working on EU funds.
Relevance of the Charter	The effective application and implementation of the Charter of Fundamental Rights of the European Union and Implementation and application of the United Nations Convention on the rights of persons with disabilities (UNCRPD) in accordance with Council Decision 2010/48/EC are horizontal enabling conditions for the implementation of EU funds in both Operational Programmes in Croatia for the period 2021-2027.
Reference	<i>n/a</i>

CONCLUSIONS

Acknowledging that the Ombudswoman could still make greater use of the Charter and ensuring that it is used more systematically in every day work of the institution, the Ombudswoman joined the project by FRA. This is more and more important as in our legal and political systems the use of the Charter appears to be increasing, including before the national courts but also in the area of law making and policymaking. Additionally, as evident from the examples, the role of the Charter has increased in the work of the Ombudswoman and is becoming more and more relevant legal source for the work of institution.

ANNEX: TEMPLATE FOR EXAMPLES OF CHARTER USE

NHRI	<i>Give name</i>
Type of Charter use	<i>Click as appropriate</i> <ul style="list-style-type: none"> ○ Complaints handling and litigation ○ Advisory functions, including impact assessment and legal scrutiny ○ Human rights monitoring ○ Reporting ○ Human rights education ○ Awareness raising ○ other
Date of use/decision/event	xx.xx.20xx
Detailed description of facts (of the case, the event, the file etc.)	<i>Describe what the example was about</i>
Legal question	<i>Describe the key legal question raised in the example</i>
Final outcome (of the case, the event, the file etc.)	<i>Describe the outcome (what did the decision conclude?, how did the legislator react to the legal opinion? Etc.)</i>
Relevance of the Charter	<i>Describe how the Charter has influenced the process and outcome (impact).</i>
Reference	<i>Source where example can be found, provide link where available</i>