

UDC: 341.231.14(4)(094.2)
 COBISS.SR-ID 171331593
 doi: <https://doi.org/10.61837/mbuir030125091i>

REVIEW SCIENTIFIC PAPER

RECEIVED: 23. 04. 2024.

ACCEPTED: 23. 05. 2025.

COMPARATIVE VIEW OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS WITH THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION AND THEIR TRENDS IN THE INTERNATIONAL COMMUNITY

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Abstract: *The second half of the 20th century was the era when countries opened up beyond their borders. This period also marks the creation of the largest and oldest international governmental organization, the United Nations. In parallel with these integrations, in Europe and beyond, the awareness of human rights is developing - a value which, by its nature, is inalienable, indivisible, absolute, and universal.*

The paper will discuss how the European Convention on Human Rights is developing, a counterpart to the Universal Declaration of Human Rights and the Charter of Fundamental Rights of the European Union, which is being developed under the example of the ECHR. These two international documents are interesting for analysis and comparison and have implications for the entire international community. What they have in common is that they have almost similar provisions, which indicates that a certain range of human rights was valid in that development process of the international community. Later, that list was expanded by the American Declaration of Human Rights.

It is important to know that the international community elevates human rights as the highest human value. The existence of these documents is only a step forward towards the integration of the modern international community.

Keywords: *UN, European Convention on Human Rights, Charter of Fundamental Rights of the European Union, comparison, trends*

1. INTRODUCTION

The comparison between the European Convention on Human Rights (hereinafter ECHR) of the Council of Europe and the Charter of Fundamental Rights of the European Union (EU Charter) is quite justified for several reasons. The first is the territory on which these international governmental organizations are located, which is common to both. We are talking about the European

continent, where there are the most member states of the Council of Europe, as well as the European Union, which actually includes the European states. They united in two communities (the Council of Europe and the EU), have signed and ratified the European Convention on Human Rights and the EU Charter.

The second reason is the history that is common to the European continent. The fiery past of the First and Second World Wars is both a

testimony and a teacher of what values they should share. Europe (the oldest continent) taught how to behave in the international community, and it has the two most important human rights documents.

And finally, the last reason, which is not so strong, is that they were created within a small time difference of five decades. The time interval from 1950 to 2000 shows that the human dimension has remained unchanged and that human rights continue to be a value category. However, in this time interval, the EU Charter also integrated some other rights that Europe was not aware of in 1950 when the ECHR was created.

This paper aims to prove that, content-wise, both documents contain similar and sometimes identical articles on human rights. The fact that judicial experts from the European Court of Human Rights in Strasbourg participated in the creation of the articles of the EU Charter also speaks in the context of this kind of research.

The subjects of analysis are both documents, while using the comparative method that will help to find conclusions and indicate the tendencies of these two documents in the future. Since the analysis was done on each separate article that actually reaches a value maximum in the paper below, a presentation of almost the most essential categories of human rights is given. Separately in each article, a display is made where they belong and whether they belong in the first category of personal freedoms and rights, the second, civil and political, and the third, economic.

From the paper that follows, it can be determined exactly what the essential coincidence is, and at the same time, the difference between them, as well as the integration from an older international document, such as the ECHR, to a newer document, such as the EU Charter. When reading these documents, one can see the division of chapters in the EU Charter according to the categories of human rights and the simplicity or uniformity of the section on human rights in the ECHR.

2. COMPARISON BETWEEN THE PREAMBLES OF THE ECHR AND THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EU

In the two preambles of these documents, the purpose for which they were adopted is highlighted - greater unity of European countries. Both of them mention the historical heritage as well as the fact that a peaceful future is based on shared values. The foundation is basic human rights and freedoms, which constitute the foundations of justice and peace in the world. Respect for freedom and fundamental rights is the fundamental foundation on which these conventions are based. In both documents, the principle of subsidiarity is emphasized in the preamble.

3. COMPARISON OF INDIVIDUAL ARTICLES BETWEEN THE TWO DOCUMENTS

First of all, here I would like to address the concern for a comparative method between these two important international documents. The main reason is that both refer mainly to the continent of Europe, where there are legal regulations that have been adopted individually by the efforts within the states or under the provocation (ratification) of these documents. Since they refer to the soil of Europe, the states were expected to accept the approach of these documents and their impact that they individually produce in society.

The time dimension of 5 decades is not such a wide gap between them, but it is quite enough to indicate that it is about something that is approximately similar and completely integrative in terms of the EU Charter, which is a later document.

As mentioned above, there are certain reasons for the justification of this comparative approach. The articles in both documents somewhere allude to completely identical rights and freedoms. As mentioned above, the Charter of Fundamental Rights of the EU is based on the content of the ECHR. This fact justifies this kind of research.

If we want to analyze which direction in the development of the contemporary international community characterizes such cooperation, during the creation of the EU Charter, we can freely say that it is neo-idealism (cooperation between two international governmental organizations for common goals and values).

3.1. RIGHT TO LIFE

The maxim that “everyone has the right to life” is contained in and common to both documents. This human right is the essence of the human rights system. One of the oldest maxims, which by its character is included in the first generation of human rights, is the so-called personal freedoms and rights. What is characteristic of the ECHR is that in the distant 1950s, the death penalty was an integral part of the ECHR, which was later abolished by Protocol No. 6. While in the Charter of Fundamental Rights of the EU, it is explicitly stated that it is prohibited. What can be noted is that in some countries today, the death penalty still exists. This is an indication that the modern international community in certain regions is still at a primitive stage. Human being is the essence of existence, no matter how many sins a person has committed. The prohibition of encroaching on someone’s life also comes from the religious approach: “God gives life and only he can take it away”.

Also, regarding the integrity of the person in the ECHR, it is contained in the same article, while in the Charter of Fundamental Rights of the EU¹ it is contained in the following article.

3.2. PROHIBITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

In both documents, this maxim is almost identical: “No one shall be subjected to torture or inhuman or degrading treatment or

¹ Everyone has the right to have his or her physical and mental integrity respected. 2. In the field of medicine and biology, the following must be respected: free and informed consent of the person concerned according to the procedures prescribed by law, prohibition of eugenic practice, especially when it aims at selection of persons, prohibition of exploiting the human body and its parts for financial gain, prohibition of reproductive cloning of human beings.

punishment.” This maxim is developed in parallel with the right to life. Just like the right to life, it belongs to the category of personal freedoms and rights. It elevates the human integrity of the person on a pedestal. Any injury to the person (physical or mental) again affects the being of the person, hurting him physically and oppressing him as a person. Treatment in prisons, the very act of deprivation of liberty, which should not be in a cruel and degrading manner, is among the basic behaviors protected by this maxim. However, just as with the right to life, there are countries in the world where this maxim is violated.

The main difference with the Charter of Fundamental Rights of the EU is that some of these provisions are contained in the integrity of a person in a separate chapter.

3.3. PROHIBITION OF SLAVERY AND FORCED LABOR

“No one shall be held in slavery or servile dependence” is the next maxim that is also common to both documents. Slavery as a category of distinction between the persons of slaves and free citizens encroaches on another human right, and that is discrimination in terms of slave dependence. With this, the European continent indicates that it belonged in the past, and that today, with the new value maxims, there is no room for it. Article 4, paragraph 2 of the ECHR defines this maxim of forced and compulsory work².

3.4. RIGHT TO FREEDOM AND SECURITY

“Everyone has the right to liberty and security of person” is the next maxim that is common to both documents. Since deprivation of liberty directly affects human freedom, it is guaranteed in both documents. With the ECHR³, it

² No one may be forced to perform forced or compulsory work in the sense of this article.

³ Every person has the right to freedom and security. No one shall be deprived of liberty, except by law in the following cases:

- a. if he is serving a prison sentence according to the judgment of the competent court;
- b. if he was arrested or detained due to opposition to the legal order of the court or in order to ensure the performance of an obligation prescribed by law;

is elaborated in more detail regarding detention and deprivation of liberty, while with the Charter of Fundamental Rights of the EU, only the maxim is shown.

3.5. RIGHT TO A FAIR TRIAL

The right to a fair trial in the ECHR is contained in Article 6, while in the Charter of Fundamental Rights of the EU it is contained in Chapter IV, Article 47, entitled “the right to effective legal aid and a fair trial”. However, in terms of content, these two articles are the same and guarantee the criteria under which a procedure will be considered to be a fair trial (public hearing, adversary before an independent and impartial tribunal, the right to a defense attorney, and a reasonable time limit. The presumption of innocence is contained in the next article of the EU Charter, while the ECHR elaborated it in the same article.

This human right belongs to the group of civil rights and is one of the most appealed within the ECHR system. Not all countries are expected to have the same protocol in court proceedings, but still, the basic coordinates should be observed. The directions given by this maxim are unequivocal and can be said to apply more to the criminal than the civil procedure if we analyze the contradiction and the presumption of innocence. It is very important to cover all the elements of this maxim because they work together and reflect the state’s justice system.

3.6. RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

The maxim “Everyone has the right to respect for his or her private and family life, home

- c. if he is arrested or detained due to detention before a competent judicial authority, when there is a justified suspicion that that person has committed a crime, or when there are justified reasons to prevent that person from committing a crime, or after committing a crime to flee;
- d. if it is about the detention of a minor based on a legal procedure, for the purpose of upbringing under supervision or for the purpose of detention before a competent judicial authority;
- e. if it concerns the detention of a person to prevent the spread of an infectious disease, mentally ill persons, alcoholics, drug addicts and vagrants;
- f. if a person is arrested or detained by law in order to prevent them from entering the country illegally or a person against whom deportation or extradition proceedings are pending.

and communication” is contained in the following articles respectively (Article 8 of the ECHR and Articles 7, 8, and 9 of the EU Charter). This maxim respects the inviolability of the home, the norms of search and the protection of communications (letters, telegrams, mail).

Since the home is a man’s fortress, the center of his life activities, this right is included in the category of personal freedoms and rights. Man has the disposition to choose the most adequate home for himself and nurture it according to his upbringing and habits. Violation of this maxim is a direct violation of human integrity, and if it is done, it should be done in a prescribed manner (e.g., the search that is carried out should be legally determined to what extent it infringes on human privacy). Here we mean both the search of the home and the search of a person. Many countries have addressed this in their systems, but unfortunately, there are also countries where the human fortress can be violated in the most rudimentary way.

3.7. FREEDOM OF OPINION, CONSCIENCE AND FAITH

This maxim is contained in the continuation of Articles 9 of the ECHR and 10 of the EU Charter. It includes the right to freedom of opinion, conscience and religion. The right includes freedom to change one’s religion or belief, alone or in community with others, and the public and private manifestation of one’s religion or belief, in observance, teaching, practice and observance⁴.

This maxim belongs to the list of personal freedoms and rights, and its violation is actually not only a harm to the person, but also to the whole society where it is not guaranteed.

3.8. FREEDOM OF EXPRESSION

This freedom is in the following articles (Article 10 of the ECHR and Article 11 of the EU Charter). It includes the freedom of opinion and receiving and sending of information and ideas without interference from public authority

⁴ The Charter of Fundamental Rights of the EU, 2000.

and independent of restrictions and media pluralism. Freedom of expression belongs to the third category of human rights, namely political rights. This maxim makes a special contribution to society because the existence of various currents of political action and dissidents leads to social integration. Unfortunately, today there are countries where this right is not included in the category of rights in the laws of these countries.

3.9. FREEDOM OF ASSEMBLY AND ASSOCIATION

This maxim is contained in Article 11 of the ECHR and Article 12 of the EU Charter and covers the right to freedom of peaceful assembly and freedom of association at all levels, especially on political, trade union and civil matters. It belongs to the group of political rights, that is, to the third group, where it is also related to social integration.

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3.11. RIGHT TO MARRY

This maxim provides that “from the moment they become capable of marriage, a man and a woman have the right to marry and create a family according to the national laws regulating the exercise of this right.”⁵ It is contained in Article 12 of the ECHR⁶ and Article 9 of the EU Charter⁷. While the ECHR guarantees it as the maxim above, the EU Charter is relied upon as provided for in the EU Charter signatory states.

⁵ The European Convention on Human Rights of 1950.

⁶ From the moment they become capable of marriage, a man and a woman have the right to marry and create a family according to the national laws regulating the exercise of this right.

⁷ The right to marry and the right to found a family will be guaranteed by the national laws that regulate the implementation of these rights.

This maxim is included in the group of personal freedoms and rights and implies the freedom of the individual to enter into marriage in a free way by choosing the partner that best suits the person. One of the most important maxims related to the natality of society, which sociologists especially claim is essential for the development of society and all humanity, taking into account the natural increase.

Although today, this right is developing in a slightly different direction with the so-called same-sex marriage considered to be a human right as well. The era of the last century considered that these were persons of two different sexes, but today that has been overcome. It is considered that a man who is married to a person of the same sex will not be able to adopt a child. It is justified and it is not discrimination because it violates the basic cell of society - natality. On the other hand, it is considered that the child will not receive the basic values in the family if he were to be adopted by spouses of the same sex.

3.12. PROHIBITION OF DISCRIMINATION

This principle in the ECHR is contained in Article 14, while in the EU Charter it is contained in Article 21. It provides that persons in the interpretation and application of both documents shall not be subjected to any discrimination based on gender, race, skin color, language, religion, political or any other opinion, national or social origin, belonging to a national minority, material position, origin by birth or any other status. The list of attributes of the EU Charter⁸ expands and extends to property, birth, disability, age and sexual orientation.

The maximum prohibition of discrimination is a pillar of any society that claims to be democratic. Discrimination entails repercussions both in man when we analyze him as an individual, as

⁸ Any discrimination on any grounds, such as sex, race, color, 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. Any discrimination based on nationality is prohibited by the application of the Treaty establishing the European Community and the Treaty on European Union and without prejudice to the special provisions of these Agreements.

well as in society and the function that man has in it. This negative phenomenon can be relativized by the existence of more norms in national laws or by special laws that would make a person's life more pleasant in society.

3.13 RIGHT TO EDUCATION

In the ECHR, it is defined by art. 2 of Protocol No. 1, while in the EU Charter it is defined by Article 14. The ECHR determines this right in the direction that the state respects the rights of parents to provide education and teaching in accordance with their religious and philosophical convictions⁹, while the EU Charter¹⁰ as an opportunity to obtain free compulsory education and respect for the freedom to establish educational institutions with respect for democratic principles and the right of parents to have the education and teaching of their children in accordance with their religious, philosophical and pedagogical convictions, in accordance with the national laws that regulate the implementation of this freedom and right. This right falls under the category of civil rights.

The right to education offers a person a worldview towards the world he faces. This process is not at all simple and implies that the states guarantee and implement the right to education, accessible to every person. The state should offer a wide range of educational profiles that would be in accordance with human needs.

3.14 RIGHT OF OWNERSHIP

It is determined by the ECHR in Article 1 of Protocol No. 1, while by the EU Charter in Article 17. The definition of this maxim is similar to that everyone has the right to protection of the right to property, except for public

⁹ ECHR, 1950.

¹⁰ Everyone has the right to education and access to vocational and continuous training. 2. This right includes the possibility of obtaining free compulsory education. 3. The freedom to establish educational institutions will be respected with respect for democratic principles and the right of parents to have the education and teaching of their children in accordance with their religious, philosophical and pedagogical convictions, in accordance with the national laws that regulate the implementation of this freedom and right.

interest (land acquisition). The EU Charter¹¹ takes a step forward in guaranteeing intellectual property. This right belongs to the category of civil rights and implies that the state guarantees the right to property of every citizen. An exception to this, acquisition implies that the state restricts this right to the citizen, only on the condition that it pays the real estate to the person, the market value at the time of the acquisition.

This determination implies that no one can dispute the right of ownership that man has acquired. This maxim guarantees the stability and security of man in terms of his property.

As for intellectual property, which is within the framework of the EU Charter, the EU is taking a step forward in this category of rights. It is completely expected and normal because when the ECHR was written, intellectual property rights were practically not subject to legal determination.

3.15 RIGHT TO FREE ELECTIONS

In the ECHR, this right is defined in art. 3 of Protocol No. 1, while in the EU Charter in Art. 39. However, the context of defining this right in both documents is different. In the first, it refers to the high contracting parties of the ECHR who commit themselves in reasonable intervals to organize free elections with a secret ballot, under conditions that allow the people to freely express their opinion on the election of the legislative body¹². While the EU Charter refers to the right to vote and the right to stand for election to the European Parliament, every citizen of the Union who has the right to vote and stand for election to the European Parliament in the Member State in which he or she resides, under the same conditions as the citizens of that State. So, in the ECHR for citizens in the legislative body of the member states of the ECHR, while in the EU Charter for candidacy in the elections for the European Parliament of an EU member state.

¹¹ Intellectual property will be protected.

¹² ECHR, 1950.

3.16 FREEDOM OF MOVEMENT

The ECHR is defined in art. 2 of Protocol No. 4, while in the EU Charter it is defined in Art. 45. It is common that every citizen of the Union, that is, a signatory state of the ECHR who has the right to move and reside freely.

4. DIFFERENCES BETWEEN THE ECHR AND THE EU CHARTER

There are also some differences in the content of these two documents. Namely, the ECHR does not determine the rights of children, which is not the case with the EU Charter¹³. Also, the ECHR does not determine the fourth generation of human rights - those for the environment, which are defined in the EU Charter¹⁴. Finally, the ECHR does not determine intellectual property rights.

The reasons for that are all too obvious. The second half of the 20th century was a period when awareness of these categories of human rights was at too low a level. Although children's rights are defined by special international documents, a great step forward has been made with the EU Charter because it also includes children as a category of people who should enjoy certain rights. As for environmental degradation and the utility of enacting laws to curb it, the EU Charter only supports that process.

While intellectual property rights can be said to have always existed, the increasing abuse and technological expansion at the end of the 20th century led to clear perceptions that something should be done in that context. Thus, numerous countries pass laws in this field, but a significant contribution exists when the EU Charter determines it.

¹³ Article 24 of the EU Charter: "Children shall have the right to such protection and care as is necessary for their well-being." They can express their views freely. Their views will be taken into account on matters that affect them according to their age and maturity.. In all activities related to children, regardless of whether they are undertaken by public authorities or private institutions, the best interests of the child will have primary importance.. Every child shall have the right to regularly maintain a personal relationship and direct contact with both parents, unless this conflicts with his or her interests."

¹⁴ Article 37 of the EU Charter: "In the policies of the Union, a higher level of environmental protection and improvement of the quality of the environment must be integrated and they must be provided in accordance with the principle of sustainable development."

5. SUMMARY

It is to be welcomed that the dimension of human rights tends towards the creation of new and new human rights that have at their core human life in a way that will make it easier and better in the social community.

The characteristics of human rights: indivisibility, inalienability, absoluteness and universality are also mentioned in the Preamble of the EU on human rights, which says that they are a system of norms that apply together, cannot be separated from the human being, that is, they belong to him, apply to everyone and they are everywhere. This means that they tend to impose themselves in the international community as a mandatory imperative that will elevate the human being to the pedestal of social events. Man and his inviolable right to life and integration in society lead all states to bow to these international imperatives. This is of particular importance because the ratification means the adaptation of the Constitution and the laws of the states to them, which will contribute to all states treating the human being equally. Unfortunately, this does not exist in the modern international community because we still have countries where human rights are not mentioned in the legal regulations. There are also such systems where they are legally determined, but in practice, the judicial protection of them does not work.

The second example is more worrying because it says that the legislative norms of the states that determine human rights are just written paper and nothing more. In such systems, admixtures can be found where a person may be afraid to seek their judicial protection.

Since the list of human rights is expanding day by day and new human rights originate only from the most modern democracies (USA, Western European and Scandinavian countries), the international community has to invest a lot of effort. This is aimed at ensuring at least respect for basic human rights in the most isolated countries, where this would be both an international and social benefit. In the world today, unfortunately, there are also countries where even

the basic right - the right to life - is not guaranteed, and the death penalty still exists.

The rigor of such social systems contributes to great dissatisfaction among the population, because man in such environments is completely helpless and cannot exercise his essential rights. When this prevails, the man in those societies wonders if he should also take care of the duties imposed by the society. In that imbalance of rights and duties actually arises the dissatisfaction of the people and of the government also. That tension can only start a conflict. The more pronounced it is, the stronger the escalation of the conflict, which can lead to civil war and revolutions.

That is why the subject of human rights, their imperative to rise as a value category, should not be underestimated, because the result of that is clear: the dissatisfaction of the human being.

Today, in a world where information circulates, where information technology flourishes, it makes man an international being. That international being is informed every day of what

is happening outside the borders of his country. If human rights are not respected in one's own country, it contributes, on the other hand, to the individual sympathizing with democratic countries. Since this is an increasingly common case, many theorists say that migrations from the so-called third world towards the USA and Europe find the human rights situation as the reason. At the same time, it is usually the intellectual elite that develops the global brain drain syndrome. This phenomenon is dangerous for the international community because it will deepen the already existing gap between highly developed and rich countries and underdeveloped and poor countries.

Human rights trends are clear. The list of human rights is expected to increase in some of the next international human rights documents.

We would conclude that human rights should be understood with a more serious approach because the implications they have in society are also very serious.

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UPOREDNI POGLED EVROPSKE KONVENCIJE O LJUDSKIM PRAVIMA SA POVELJOM O OSNOVNIM PRAVIMA EVROPSKE UNIJE I NJIHOVI TRENDOVI U MEĐUNARODNOJ ZAJEDNICI

Rezime: Druga polovina 20. veka je doba kada se zemlje otvaraju van svojih granica. U stvari, ovaj period obeležava i stvaranje najveće i najstarije međunarodne organizacije Ujedinjenih nacija. Paralelno sa ovim integracijama, u Evropi i šire, razvija se svest o ljudskim pravima – vrednosti koja je po svojoj prirodi neotuđiva, nedeljiva, apsolutna i univerzalna. U radu se s epistemološkog stanovišta sagledava razvoj Evropske konvencija o ljudskim pravima, pandan Univerzalnoj deklaraciji o ljudskim pravima i Povelji o osnovnim pravima Evropske unije, koja se razvija na primeru EKLJP. Ova dva međunarodna dokumenta su zanimljiva za analizu i poređenje i imaju implikacije na čitavu međunarodnu zajednicu. Zajedničko im je da imaju skoro slične odredbe, što ukazuje da je u tom razvojnem procesu međunarodne zajednice važio određeni spektar ljudskih prava. Kasnije je ta lista proširena američkom deklaracijom o ljudskim pravima. Važno je znati da međunarodna zajednica ljudska prava uzdiže kao najvišu vrijednost. Postojanje ovih dokumenata samo je korak napred ka integraciji savremene međunarodne zajednice.

Ključne reči: UN, Evropska konvencija o ljudskim pravima, Povelja o osnovnim pravima Evropske unije, poređenje, trendovi