

Универзитет „Гоце Делчев“ - Штип, Правен факултет, Центар за правно  
политички истражувања, Штип, Македонија

Државен Универзитет во Воронеж, Правен факултет,  
Воронеж, Русија

Универзитет во Лиеж, Факултет за право, политички науки и криминологија,  
Лиеж, Белгија



ВТОРА МЕЃУНАРОДНА НАУЧНА КОНФЕРЕНЦИЈА

ОПШТЕСТВЕНИТЕ ПРОМЕНИ ВО  
ГЛОБАЛНИОТ СВЕТ

ЗБОРНИК НА ТРУДОВИ

Center for legal and Political Research

Штип, 2015

Second International Scientific Conference: SOCIAL CHANGE IN THE GLOBAL WORLD  
© 2015 Copyright Goce Delcev University in Shtip, Republic of Macedonia. Address: Goce Delcev University, Shtip, Faculty of Law, ul. Krste Musirov bb, PO box 201, 2000, Shtip, R. Macedonia. [www.ugd.edu.mk](http://www.ugd.edu.mk); [www.clpmk.org](http://www.clpmk.org).

Печати/ Print 2-ри Август- Штип / 2- ri Avgust- Shtip

Графичка подготовка – Центар за Правно- политички истражувања

CIP - Каталогизација во публикација

Национална и универзитетска библиотека "Св. Климент Охридски", Скопје

3(062)

МЕЃУНАРОДНА научна конференција (2 ; 2015 ; Штип)

Општествените промени во глобалниот свет : зборник на трудови /  
Втора меѓународна научна конференција, Штип, 2015. - Штип :  
Универзитет "Гоце Делчев", 2015. - 1336 стр. ; 24 см

Текст на повеќе јазици. - Фусноти кон текстот. - Библиографија кон  
трудите

ISBN 978-608-244-267-9

а) Општествени науки - Зборници

COBISS.MK-ID 100106506

Goce Delcev University in Shtip, Faculty of Law, Center for Legal and Political  
Research, Shtip, Macedonia

State University of Voronezh, Faculty of Law, Voronezh, Russia

University of Liege, Faculty of Law, Political Science and Criminology, Liege,  
Belgium



SECOND INTERNATIONAL SCIENTIFIC CONFERENCE

**SOCIAL CHANGE IN THE GLOBAL  
WORLD**

**PROCEEDINGS**

Center for legal and Political Research

**Shtip, 2015**

Университет им. Гоце Делчева, Юридический факультет, Центр правовых и  
политических исследований (Штип, Македония)  
Воронежский государственный университет, Юридический факультет  
(Воронеж, Россия)  
Льежский университет, Факультет права, политологии и криминологии (Льеж,  
Бельгия)



ВТОРАЯ МЕЖДУНАРОДНАЯ НАУЧНАЯ КОНФЕРЕНЦИЯ

**СОЦИАЛЬНЫЕ ИЗМЕНЕНИЯ В  
ГЛОБАЛЬНОМ МИРЕ**

**СБОРНИК МАТЕРИАЛОВ**

Center for legal and Political Research

Штип, 2015

**Организациски комитет // Organizational Committee / Организационный комитет конференции**

Strashko Stojanovski PhD, Faculty of Law, Goce Delcev University in Shtip, Macedonia, [strasko.stojanovski@ugd.edu.mk](mailto:strasko.stojanovski@ugd.edu.mk)

Jovan Ananiev PhD, Faculty of Law, University "Goce Delcev"- Shtip, Macedonia, [jovan.ananiev@ugd.edu.mk](mailto:jovan.ananiev@ugd.edu.mk)

Kristina Misheva PhD, Faculty of Law, Goce Delcev University in Shtip, Macedonia, [kristina.miseva@ugd.edu.mk](mailto:kristina.miseva@ugd.edu.mk)

Marija Ampovska PhD, Faculty of Law, Goce Delcev University in Shtip, Macedonia, [marija.radevska@ugd.edu.mk](mailto:marija.radevska@ugd.edu.mk)

Natalia Vladimirovna Butusova PhD, Faculty of Law, Voronezh State University, Russia, [butusova@law.vsu.ru](mailto:butusova@law.vsu.ru)

Nives Mazur Kumrić PhD, Faculty of Law, Political Science and Criminology, University of Liège, Belgium, [nives.mazurkumric@ulg.ac.be](mailto:nives.mazurkumric@ulg.ac.be)

**Програмски комитет // Program Committee / Программный комитет конференции**

Adoyi Onoja PhD, Nassarawa State University, Keffi, Nigeria, [onojaa@yahoo.com](mailto:onojaa@yahoo.com)

Afet Mamuti PhD, Faculty of Law, State University of Tetovo, Macedonia, [afet.mamuti@unite.edu.mk](mailto:afet.mamuti@unite.edu.mk)

Agim Nuhiu PhD, Faculty of Law, State University of Tetovo, Macedonia, [agim.nuhiu@unite.edu.mk](mailto:agim.nuhiu@unite.edu.mk)

Agor Sarkisyan PhD, University of Svishtov, Bulgaria, [agop@uni-svishtov.bg](mailto:agop@uni-svishtov.bg)

Alenka Verbole PhD, currently- OSCE Mission in Tirana, University of Ljubljana, Slovenia, [alenka.verbole@osce.org](mailto:alenka.verbole@osce.org)

Altin Shegani PhD, Faculty of Law, University of Tirana, Albania, [altin\\_shegani@yahoo.com](mailto:altin_shegani@yahoo.com)

Ana Nikodinovska Krstevska PhD, Faculty of Law, Goce Delcev University in Shtip, Macedonia, [ana.nikodinovska@ugd.edu.mk](mailto:ana.nikodinovska@ugd.edu.mk)

Anastasia Bermúdez Torres PhD, Faculty of Law, Political Science and Criminology, University of Liege, Belgium, [abermudez@ulg.ac.be](mailto:abermudez@ulg.ac.be)

Andon Majhoshev PhD, Faculty of Law, Goce Delcev University in Shtip, Macedonia, [andon.majhosev@ugd.edu.mk](mailto:andon.majhosev@ugd.edu.mk)

Bekim Beliqi PhD, University of Prishtina, Department of Political Science, Kosovo, [bekim.baliqi@gmail.com](mailto:bekim.baliqi@gmail.com)

Belul Beqaj PhD, University of Business and Technology, Department of Political Science, Prishtina, Kosovo, [belul.beqaj@gmail.com](mailto:belul.beqaj@gmail.com)

Borka Tushevska PhD, Faculty of Law, Goce Delcev University in Shtip, Macedonia,  
[borka.tusevska@ugd.edu.mk](mailto:borka.tusevska@ugd.edu.mk)

Elena Ivanovna Nosreva PhD, Faculty of Law, Voronezh State University, Russia,  
[elena@nosyreva.vrn.ru](mailto:elena@nosyreva.vrn.ru)

Gabriela Belova PhD, Faculty of Law, University "Neofit Rilski", Blagoevgrad, Bulgaria,  
[gbelova@hotmail.com](mailto:gbelova@hotmail.com)

Gemma Andreone PhD, Institute for International Legal Studies of the Italian National Research Council (ISGI - CNR), Italy, [gemma.andreone@gmail.com](mailto:gemma.andreone@gmail.com)

Haluk Aydin PhD, Faculty of Arts and Sciences, Balikesir University, Balikesir, Turkey,  
[aydinhaluk@hotmail.com](mailto:aydinhaluk@hotmail.com)

Ivana Bajakić PhD, Department of Economic Sciences, Faculty of Law, Zagreb, Croatia,  
[ivana.bajakic@pravo.hr](mailto:ivana.bajakic@pravo.hr)

Kristina Misheva PhD, Faculty of Law, Goce Delcev University in Shtip, Macedonia,  
[kristina.miseva@ugd.edu.mk](mailto:kristina.miseva@ugd.edu.mk)

Kristine Whitnoble PhD, Faculty of Law, Goce Delcev University in Shtip, Macedonia,  
[kristine.whitnoble@ugd.edu.mk](mailto:kristine.whitnoble@ugd.edu.mk)

Jadranka Denkova PhD, Faculty of Law, Goce Delcev University in Shtip, Macedonia,  
[jadranka.denkova@ugd.edu.mk](mailto:jadranka.denkova@ugd.edu.mk)

James C. Helfrich PhD, Global Scholars, Liberty University, Colorado, USA,  
[jchelfrich@aol.com](mailto:jchelfrich@aol.com)

Jovan Ananiev PhD, Faculty of Law, University "Goce Delcev"- Shtip, Macedonia,  
[jovan.ananiev@ugd.edu.mk](mailto:jovan.ananiev@ugd.edu.mk)

Jusuf Zejneli PhD, Faculty of Law, State University of Tetovo, Macedonia,  
[jusuf.zejneli@unite.edu.mk](mailto:jusuf.zejneli@unite.edu.mk)

Maciej Czerwinski PhD, Institute of Slavic Philology, Jagiellonian University, Krakow, Poland, [maciej.czerwinski@uj.edu.pl](mailto:maciej.czerwinski@uj.edu.pl)

Marieta Olaru PhD, Doctoral School in Business Administration, Research Center for Business Administration, Department of Business, Consumer Sciences and Quality Management, The Bucharest University of Economic Studies, Romania,  
[olaru.marieta@gmail.com](mailto:olaru.marieta@gmail.com)

Marija Ignjatovic PhD, Faculty of Law, University of Nis, Serbia,  
[marija@prafak.prafak.ni.ac.rs](mailto:marija@prafak.prafak.ni.ac.rs)

Marina Valentinovna Sencova (Karaseva) PhD, Faculty of Law, Voronezh State University, Russia, [smv@law.vsu.ru](mailto:smv@law.vsu.ru)

Mato Brautović PhD, University of Dubrovnik, Croatia, [mbraut@unidu.hr](mailto:mbraut@unidu.hr)

Migena Leskoviku PhD, Law Faculty, European University of Tirana, Albania,  
[migena.leskoviku@gmail.com](mailto:migena.leskoviku@gmail.com)

Natalia Vladimirovna Butusova PhD, Faculty of Law, Voronezh State University, Russia,  
[butusova@law.vsu.ru](mailto:butusova@law.vsu.ru)

Naser Ademi PhD, Faculty of Law, State University of Tetovo, Macedonia ,  
[dr.naserademi@gmail.com](mailto:dr.naserademi@gmail.com)

Nives Mazur Kumrić PhD, Faculty of Law, Political Science and Criminology, University of Liège, Belgium, [nives.mazurkumric@ulg.ac.be](mailto:nives.mazurkumric@ulg.ac.be)

Olga Kosevaliska PhD, University "Goce Delcev"- Shtip, Faculty of Law, Macedonia, [olga.kosevaliska@ugd.edu.mk](mailto:olga.kosevaliska@ugd.edu.mk)

Patrick Wautelet PhD, Faculty of Law, Political Science and Criminology, University of Liege, Belgium, [patrick.wautelet@ulg.ac.be](mailto:patrick.wautelet@ulg.ac.be)

Recai Aydin PhD, Associate Professor, Vice Rector of International University of Sarajevo, Bosnia and Herzegovina, [raydin77027@yahoo.com](mailto:raydin77027@yahoo.com)

Ruzica Simic Banovic, PhD in Economics, Senior Assistant - Lecturer, Faculty of Law, University of Zagreb, Croatia, [ruzica.simic@pravo.hr](mailto:ruzica.simic@pravo.hr)

Senada Sabic Selo PhD, Institute for International Relations, Zagreb, Croatia, [senada@irno.hr](mailto:senada@irno.hr)

Silviu G. Totelecan PhD, Cluj-Napoca Branch of Romanian Academy, Socio-Human Research Department of "G. Baritiu" History Institute, Romania, [silviu.totelecan@g.ail.com](mailto:silviu.totelecan@g.ail.com)

Slavejko Sasajkovski PhD, Institute for Sociological, Political and Legal Research, University "St. Cyril and Methodius", Skopje, Macedonia, [bilbilef@isppl.ukim.edu.mk](mailto:bilbilef@isppl.ukim.edu.mk)

Strahinja Miljkovića PhD, Faculty of Law, Mitrovica, [strahinja.miljkovic@pr.ac.rs](mailto:strahinja.miljkovic@pr.ac.rs)

Strashko Stojanovski PhD, Faculty of Law, Goce Delcev University in Shtip, Macedonia, [strasko.stojanovski@ugd.edu.mk](mailto:strasko.stojanovski@ugd.edu.mk)

Suzana Dzamtoska Zdravkovska PhD, Faculty of Law, Goce Delcev University in Shtip, Macedonia, [suzana.dzamtoska@ugd.edu.mk](mailto:suzana.dzamtoska@ugd.edu.mk)

Tamara Perisin, MJur (Oxon) PhD, Department of European Public Law - Jean Monnet, University of Zagreb - Faculty of Law, Croatia, [tamara.perisin@pravo.hr](mailto:tamara.perisin@pravo.hr)

Tatjana Petrovna Suspiciņa PhD, Moscow Law Academy, Moscow, Russia

Tunjica Petrašević PhD, Faculty of Law, University of Osijek, Croatia, [tpetrasc@pravos.hr](mailto:tpetrasc@pravos.hr)

Yuriy Nikolaevich Starilov PhD, Faculty of Law, Voronezh State University, Russia, [juristar@vmail.ru](mailto:juristar@vmail.ru)

Wouter Van Dooren PhD, Public Administration and Management, University of Antwerp, Belgium, [wouter.vandooren@uantwerpen.be](mailto:wouter.vandooren@uantwerpen.be)

Zoran Tomic PhD, University of Mostar, Bosnia and Herzegovina, [zoran.tomic@sve-mo.ba](mailto:zoran.tomic@sve-mo.ba)





## Содержина / Table of Contents

<b>LAW.....</b>	<b>19</b>
<b>ФАКТОРЫ ИЗМЕНЕНИЙ КОНСТИТУЦИЙ</b>	
<b>Светлана Шуляпина.....</b>	<b>21</b>
<b>СРАВНИТЕЛЬНО-ПРАВОВОЕ ИССЛЕДОВАНИЕ КОНСТИТУЦИОННОГО РЕГУЛИРОВАНИЯ ПРЕДОТВРАЩЕНИЯ И РАЗРЕШЕНИЯ КОЛЛИЗИЙ В РОССИИ И ЗАРУБЕЖНЫХ СТРАНАХ</b>	
<b>Инна Стародубцева .....</b>	<b>31</b>
<b>ГУСУДАРСТВЕННАЯ НАЦИОНАЛЬНАЯ ПОЛИТИКА РОССИЙСКОЙ ФЕДЕРАЦИИ: ПРАВОО РЕГУЛИРОВАНИЕ, ПРОБЛЕМЫ И ПЕРСПЕКТИВЫ</b>	
<b>Тамара Владимировна Заметина.....</b>	<b>55</b>
<b>THE MEDIATION IN DOMESTIC VIOLENCE CASES IN POLAND</b>	
<b>Barbara J. Pawlak .....</b>	<b>67</b>
<b>EMPHYTEUSIS IN THE ROMAN LAW</b>	
<b>Marija Ignjatović .....</b>	<b>77</b>
<b>ЮВЕНАЛЬНАЯ ЮСТИЦИЯ В РОССИИ: ПРОБЛЕМЫ СТАНОВЛЕНИЯ</b>	
<b>Вячеслав Просвирнин .....</b>	<b>85</b>
<b>ASSESSMENT OF EVIDENCE IN CRIMINAL PROCEDURE</b>	
<b>Saša Knežević .....</b>	<b>101</b>
<b>СЛОБОДНОТО СУДСКО УВЕРУВАЊЕ И ИНДИВИДУАЛИЗАЦИЈАТА НА САНКЦИЈИТЕ ВО СВЕТИЛИНАТА НА ЗАКОНСКИТЕ РЕШЕНИЈА ЗА ВОЕДНАЧУВАЊЕ НА КАЗНЕНАТА ПОЛИТИКА</b>	
<b>Гордана Бужаровска – Лажетниќ, Олга Кошевалнска, Лазар Напев .....</b>	<b>117</b>
<b>ILLEGAL EVIDENCE IN CRIMINAL PROCEEDINGS</b>	
<b>Ivan Ilic .....</b>	<b>149</b>

ВОВЕДУВАЊЕТО НА ПОРОТА ВО КАЗНЕНОТО ЗАКОНОДАВСТВО НА  
РМ - ПОСЛЕДЕН ЧЕКОР ВО ЗАОКРУЖУВАЊЕ НА АКУЗАТОРНИОТ  
ПРОЦЕСЕН СИСТЕМ

**Нада Донева, Елена Максимова** ..... 157

НАЈНОВИТЕ КОНТРОЛНИ МЕХАНИЗМИ ЗА КАЗНЕНО - ПРАВНА  
ЗАШТИТА НА ЈАВНИТЕ НАБАВКИ ВО Р. МАКЕДОНИЈА ВО ФУНКЦИЈА  
НА СПРЕЧУВАЊЕ ОД ЗЛОУПОТРЕБИ НА ЈАВНИТЕ ФИНАНСИИ

**Александра Ангеловска, Данче Николовска Вратевска** ..... 187

СТАНОВЛЕНИЕ ПРЕДСТАВЛЕНИЙ О ЗАЩИТИТЕЛЬНОЙ  
ДЕЯТЕЛЬНОСТИ В УГОЛОВНОМ ПРОЦЕССЕ В ТРУДАХ РУССКИХ  
УЧЕНЫХ

**Георгий Ильич Сибирцев** ..... 205

RIGHTS OF VICTIMS OF HATE CRIMES

**Besa Arifi** ..... 217

TORTURE AND CRIMINAL-LAW PROTECTION OF THE HUMAN PERSON  
IN SOME OF THE WESTERN BALKAN COUNTRIES

**Efton Peppo** ..... 231

ACTUAL ISSUES OF THE SUCCESSION LAW REFORM IN THE REPUBLIC  
OF SERBIA

**Novak Krstić** ..... 245

КАУЗАЛИТЕТ ВО РАМКИ НА ГРАЃАНСКО-ПРАВНАТА ОДГОВОРНОСТ  
ЗА НУКЛЕАРНА ШТЕТА

**Марија Амповска** ..... 265

ЗНАЧЕЊЕТО НА ЖИВЕЕЊЕТО ВО ТРАЈНА ЗАЕДНИЦА ВО ОДНОС НА  
ЗАКОНСКОТО НАСЛЕДУВАЊЕ

**Ристо Илиоски** ..... 283

СРАВНИТЕЛНО-ПРАВОВОЈ АНАЛИЗ ЗАКОНОДАТЕЛСТВОА О  
ГРАЖДАНСТВЕ РОССИЙСКОЙ ФЕДЕРАЦИИ И РЕСПУБЛИКИ  
МАКЕДОНИЈА

**Вера Бабурнина** ..... 297

ПРИРОДОПОЛЬЗОВАНИЕ И ОХРАНА ОКРУЖАЮЩЕЙ СРЕДЫ КАК ОБЪЕКТ АДМИНИСТРАТИВНО-ПРАВОВОГО РЕГУЛИРОВАНИЯ	
<b>Екатерина Маркина .....</b>	<b>315</b>
ТРЕТМАНОТ НА ИНТЕЛЕКТУАЛНАТА СОПСТВЕНОСТ ВО МЕЃУНАРОДНИТЕ И ЕВРОПСКИТЕ ИНСТРУМЕНТИ ЗА ЧОВЕКОВИ ПРАВА	
<b>Јелена Ристик .....</b>	<b>327</b>
ПОСТАПКА ЗА ПРИЗНАВАЊЕ НА ПРАВОТО НА ПАТЕНТ	
<b>Дарко Јанкуловски .....</b>	<b>347</b>
DIVORCE BY MUTUAL CONSENT	
<b>Tanja Kitano vić .....</b>	<b>363</b>
THE CONTRACTED PROPERTY REGIME OF THE SPOUSES - COMPARATIVE OVERVIEW	
<b>Emine Zendeli, Nagip Zendeli .....</b>	<b>377</b>
ROLE OF STOCK EXCHANGE AND SECURITIES IN ACTIVITY OF LISTED JOINT STOCK COMPANIES	
<b>Edi Spaho .....</b>	<b>395</b>
IMPORTANCE OF SOCIAL-POLITICAL TAX PRINCIPLES IN REGARDS TO PERSONAL INCOME TAXATION	
<b>Emina Jerković .....</b>	<b>409</b>
THE REGIME FOR FLAG STATE RESPONSIBILITY IN INTERNATIONAL SHIPPING LAW	
<b>Borka Tushevska .....</b>	<b>427</b>
ENTREPRENEURIAL CAPITALISM IN SOUTHEASTERN EUROPE: IS THERE A PROGRESS?	
<b>Ružica Šimić Banović .....</b>	<b>451</b>

POSSIBLE SOLUTIONS FOR RESOLUTION OF DISPUTES FOR KNOW-HOW  
AGREEMENTS FROM THE ASPECT OF THE PROVISIONS CONTAINED  
WITHIN THE MACEDONIAN AND EUROPEAN UNION LEGISLATION

**Suzana Nashkova** ..... 475

**POLITICS..... 491**

САМОЗАШТИТАТА ВО МАКЕДОНСКОТО ОПШТЕСТВО ОД ВРЕМЕТО  
НА СОЦИЈАЛИЗМОТ ДО ДЕНЕС

**Драган Веселинов** ..... 493

ORGANIZATION AND STRUCTURE OF THE POLICE

**Kostadina Klechkaroska** ..... 505

ИЛЕГАЛНАТА МИГРАЦИЈА КАКО ПРАШАЊЕ ПО БЕЗБЕДНОСТА

**Фелимена Лазаревска, Стефанија Агрова, Тања Јовановска** ..... 523

НЕКОИ ПРЕДИЗВИЦИ НА МЕЃУЕТНИЧКАТА ИНТЕГРАЦИЈА ВО  
ОБРАЗОВАНИЕТО ВО МАКЕДОНИЈА

**Бујар Адил**..... 537

RISKS AND POSSIBILITIES OF FEDERALISM IN THE CONDITIONS OF  
GLOBALIZATION

**Victoria Chernikova** ..... 553

COSMOPOLITAN DISSONANCE AND GLOBAL JUSTICE

**Marin Beroš** ..... 563

СОВРЕМЕННЫЙ ГЛОБАЛЬНЫЙ КОНФЛИКТ: ПРОБЛЕМА  
ИДЕНТИФИКАЦИИ

**Александра Викторовна Глухова** ..... 577

ПОЛИТИЧЕСКАЯ ТЕОЛОГИЯ В ИДЕОЛОГИЧЕСКИХ ЭЛЕМЕНТАХ  
СОВРЕМЕННОЙ ПРАВОВОЙ СРЕДЫ

**Сергей Хорунжий** ..... 597

THE INFLUENCE OF ASSESION TO THE EU INTERNAL MARKET ON THE SOCIAL MODEL	
<b>Valbona Nano</b> .....	619
THE EUROPEAN UNION AS A GLOBAL ACTOR PRESENTED THROUGH ITS FOREIGN POLICY	
<b>Elena Tilovska-Kecedzi</b> .....	631
THE IMPACT OF THE NEW TECHNOLOGIES ON THE INTERNATIONAL RELATIONS	
<b>Dejan Marolov</b> .....	639
ВЛИЈАНИЕТО НА ОРГАНИТЕ НА ДРЖАВНАТА ВЛАСТ ВРЗ ДОНЕСУВАЊЕТО НА НАДВОРЕШНО - ПОЛИТИЧКИТЕ ОДЛУКИ НА РЕПУБЛИКА МАКЕДОНИЈА	
<b>Хаљим Бајрактари, Љуљзим Фаризи</b> .....	645
ФИКЦИЈАТА НА ОБЈЕКТИВНИТЕ КРИТЕРИУМИ ПРОТИВ ПРАВОТО НА САМООПРЕДЕЛУВАЊЕ: ПРИМЕРОТ НА МАКЕДОНСКОТО МАЏИНСТВО ВО БУГАРИЈА	
<b>Стојко Стојков</b> .....	659
GROWING IMPORTANCE OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION IN SAFEGUARDING HUMAN RIGHTS	
<b>Zaneta Poposka</b> .....	677
РЕАЛИЗАЦИЈА МЕЖДУНАРОДНОГО ГУМАНИТАНОГО ПРАВА В КАНАДЕ	
<b>Павел Владимирович Донцов</b> .....	691
THE POLITICAL PARTIES PROGRAMS AND THEIR STRUCTURE IN REGARDS TO EFFORTS FOR DEVELOPMENT OF MULTI-ETHNIC SOCIETY IN MACEDONIA	
<b>Natalija Shikova</b> .....	697
CRISIS AND CHALLENGES OF THE MACEDONIAN ASSEMBLY 1991-2014	
<b>Goran Shibakovski, Daniela Koteska Lozoska</b> .....	719

ТРАНСПАРЕТНОСТ НА ФИНАНСИРАЊЕТО НА ПОЛИТИЧКИТЕ ПАРТИИ И ИЗБОРНИТЕ КАМПАЊИ	
<b>Ирена Поповска</b> .....	727
ПОЛИТИЧЕСКИТЕ ИДЕОЛОГИИ В ПЕРИОД СОЦИАЛНЫХ ИЗМЕНЕНИЙ: ОПИТ РОССИИ	
<b>Николай Баранов</b> .....	751
ПАРЛАМЕНТОТ - ПРЕТСТАВНИЧКИ ОРГАН НА ГРАЃАНИТЕ ИЛИ НА ПОЛИТИЧКИТЕ ПАРТИИ	
<b>Снежана Гушева</b> .....	777
TURKEY AFTER THE ELECTIONS: A PYRRHIC VICTORY?	
<b>Зеупер Кауа</b> .....	795
ЛИНГВИСТИЧЕСКИЕ СРЕДСТВА СОЗДАНИЯ ПОЛОЖИТЕЛЬНОГО ИМИДЖА ПРЕЗИДЕНТА РФ	
<b>Мария Лапыгина</b> .....	807
ВЛИЈАНИЕТО НА ИЗБОРНИТЕ ПРАВИЛА ВРЗ ПРЕТСТАВЕНОСТА НА МАЛЦИНСТВОТА ВО СОБРАНИЕТО НА РЕПУБЛИКА МАКЕДОНИЈА	
<b>Никола Амбаров</b> .....	815
ЈАВНА АДМИНИСТРАЦИЈА И ЈАВНА ПОЛИТИКА – ДИХОТОМИЈА VIS- À-VIS ЗАЕМНА КОМПЛЕМЕНТАРНОСТ	
<b>Дејан Витански</b> .....	831
THE EMPLOYMENT PROCESS IN TOURIST COMPANIES AS A CONDITION FOR THEIR ENTREPRENURIAL ADVANCE	
<b>Zlatko Jakovlev, Mimoza Serafimova, Cane Koteski</b> .....	841
ПРОБЛЕМЫ ПРОДОВОЛЬСТВЕННОЙ БЕЗОПАСНОСТИ В СОВРЕМЕННОМ МИРЕ	
<b>Наталья Симонова</b> .....	857
ENTREPRENEURIAL ADVANCEMENT OF WOMEN IN TOURISM: THE CASE OF MACEDONIA	
<b>Mimoza Serafimova, Biljana Petrevska</b> .....	863

ВИДОВИ И ТИПОВИ НА МЕНАЏЕРИ Војо Беловски.....	877
<b>SOCIETY.....</b>	<b>889</b>
ГРАЃАНСКОТО ОПШТЕСТВО ВО РЕПУБЛИКА МАКЕДОНИЈА Виолета Ничева Тиквешанска .....	891
THE CIVIL PERSPECTIVE ON THE METHOD OF PREVENTION OF CORRUPTION Cane T. Mojanoski .....	901
ГРАЃАНСКАТА ПАРТИЦИПАТИВНОСТ ВО ПРОЦЕСОТ НА ДОНЕСУВАЊЕ НА ОДЛУКИ ВО ЕДИНИЦИТЕ НА ЛОКАЛНАТА САМОУПРАВА ВО Р. МАКЕДОНИЈА Стратко Стојановски, Јован Ананиев.....	917
ГЕНДЕРНЫЕ РОЛИ, СОЦИАЛЬНЫЕ СТЕРЕОТИПЫ И ВЕЧНИЙ КОНФЛИКТ В РОМАНЕ МАРЕ КАНДРЕ «ЖЕНЧИНА И ДОКТОР ДРЕЙФ» О.В. Тихонова .....	933
ON THE FORMATION OF A EUROPEAN IDENTITY Dmitriy Galushko .....	937
ПАТОПИСЕЦОТ ПОМЕЃУ ЗАПАДНАТА И ИСТОЧНОЕВРОПСКАТА КУЛТУРА: ЕМОЦИОНАЛНИОТ ДИСКУРС ВО СОВРЕМЕНИОТ ПАТОПИС НА ПЕТЕР ХАНДКЕ Милица Денковска .....	943
РЕЛАЦИЈАТА ИСТОК-ЗАПАД (ОРИЕНТАЛИЗАМ-БАЛКАНИЗАМ) ВО ЕДНА СОВРЕМЕНА МАКЕДОНСКА ДРАМА Милена Ристова-Михајловска .....	955
NATIONAL FUTURISM AND INVENTED TRADITIONS OF CHUVASH IDENTITU Maksym W. Kyrchanoff (Kärçansen Maḡš ämĕ).....	965

IDENTITIES, CULTURAL DIVERSITY AND BOUNDARIES IN POSTSOVIET COUNTRIES (CASES OF MOLDOVA AND RUSSIA)

**Olga Sidenko, Darya Scheglova** ..... 981

МАКЕДОНАКИОТ НАЦИОНАЛЕН ИДЕНТИТЕТ ВО ПРЕГРАТКА НА ЕВРОПСКИОТ КОЛЕКТИВЕН ИДЕНТИТЕТ

**Анита Димитријовска Јанкуловска** ..... 997

СПОРОТ ЗА ИМЕТО МЕЃУ МАКЕДОНИЈА И ГРЦИЈА: МАКЕДОНСКИОТ ИДЕНТИТЕТ И УПОТРЕБАТА НА ТЕРМИНОТ „МАКЕДОНЕЦ“ ВО ДЕЛОТ НА МАКЕДОНИЈА ПОД ГРЦИЈА

**Димитар Љоровски, Страшко Стојановски, Магдалена Николова**.....1005

ФАЛШИВОЕ ПРЕДСТАВЛЕНИЕ ОБ «АМЕРИКАНСКОЙ МЕЧТЕ» В АМЕРИКАНСКОЙ КУЛЬТУРЕ ИММИГРАНТОВ

**Сафаа Рабесах** .....1025

Е-ПРЕТПРИЕМНИШТВОТО КАКО МОЖНОСТ ЗА НАМАЛУВАЊЕ НА НАУЧНАТА МИГРАЦИЈА ОД РЕПУБЛИКА МАКЕДОНИЈА

**Татјана Петковска Мирчевска, Наташа Данилоска, Дпана Бошковска, Зоран Јаневски**.....1035

ВЗАИМОДЕЙСТВИЕ ВЛАСТИ И МЕСТНЫХ ЭТНИЧЕСКИХ И КОНФЕССИОНАЛЬНЫХ СООБЩЕСТВ КАК УСЛОВИЕ И ГАРАНТИЯ НОРМАЛЬНОЙ СОЦИАЛЬНОЙ АДАПТАЦИИ МИГРАНТОВ

**Михаил Глебович Федоров** .....1049

THE RELATIONSHIP OF GLOBALIZATION AND ISLAMIC RELIGION IN THE PROCESS OF GLOBALIZATION

**Фатмир Замми** .....1061

THE NEW ROLE OF CULTURE, HISTORY AND ARCHAEOLOGY IN THE GLOBALISED WORLD OF PERCEPTIONS

**Ljuben Teydovski** .....1073

GLOBALIZATION AND ITS IMPACT ON THE CONTEMPORARY SOCIETY

**Xhemail Limani** .....1087



MORAL HAZARD AND GLOBAL FINANCIAL CRISIS IN 2008 Slavejko Sasajkovski, Ljubica Micanovska.....	1099
ПОСТАНОВКА ПРОБЛЕМЫ АНОМИИ И ОТЧУЖДЕНИЯ В НАУЧНОМ ПРОСТРАНСТВЕ СОЦИОЛОГИИ РЕЛИГИИ Карина Ивановна Политкина, Светлана Викторовна Ануфриенко.....	1113
INTERNET AS AN IMPETUS FOR SOCIAL CHANGE Ljupcho Cvetkovski .....	1121
СРАВНИТЕЛЬНО-ПРАВОВОЙ АНАЛИЗ ЗАКОНОДАТЕЛЬСТВА О МОЛОДЕЖНОЙ ПОЛИТИКЕ В СТРАНАХ СОДРУЖЕСТВА НЕЗАВИСИМЫХ ГОСУДАРСТВ Татьяна Шелудякова .....	1133
СЕМЕЙСТВОТО И СЕМЕЈНИТЕ ВРЕДНОСТИ ВО СОВРЕМЕНАТА МАКЕДОНСКА КНИЖЕВНОСТ ЗА ДЕЦА И МЛАДИ Јованка Денкова .....	1143
ВЛИЈАНИЕТО НА ГЛОБАЛИЗАЦИЈАТА ВРЗ МАКЕДОНСКОТО СЕМЕЙСТВО Македонка Радуловиќ .....	1161
СЕМЕЙСТВОТО И СЕМЕЈНИТЕ ВРЕДНОСТИ ВО ГЛОБАЛНИОТ СВЕТ Тања Јовановска .....	1171
ПОЈАВАТА НА БЕЗДОМНИШТВО: ОСВРТ КОН РАБОТАТА НА ПУНКТОТ ЗА БЕЗДОМНИЦИ ВО МОМИН ПОТОК ЗА ПЕРИОД ЈУЛИ – ДЕКЕМВРИ 2014 Драгана Лазаревска .....	1181
КУЛТУРНАТА МАРГИНАЛИЗАЦИЈА НА ЖЕНИТЕ ДЕТЕРМИНИРАНА ОД АНДРОЦЕНТРИЗМОТ Гзим Цамбази .....	1199
ИЗОБРАЖЕНИЕ БЫТА ДЕРЕВНИВ ПОВЕСТИ А. ВАРЛАМОВА «ДОМ В ДЕРЕВНЕ Татьяна Анатольевна Тернова .....	1209

КОГА ИДЕОЛОГИЈАТА ЈА ЗАМЕНУВА РЕЛИГИЈАТА – СУДИРИТЕ СЕ ВО ЕКСПАНЗИЈА	
Марија Емилија Кукубајска .....	1213

## **MEDIA AND COMUNICATION..... 1229**

AUDIOVISUAL MEDIA MARKET IN ALBANIA: THE TRANSITION TO DIGITAL BROADCASTING - THE LEGAL FRAMEWORK AND CHALLENGES	
Endira Bushati .....	1231

КОНСТИТУЦИОННО-ПРАВОВЫЕ ИНСТИТУТЫ В ИНФОРМАЦИОННОМ ОБЩЕСТВЕ	
Юрий Просвирнин .....	1243

NEW MEDIA – OPORTUNITIES AND CHALLENGES OF MODERN BUSINESS ORGANIZATION MANAGEMENT	
Yanica Petkova Dimitrova .....	1265

МЕДИУМИТЕ И ГОВОРОТ НА ОМРАЗА: ПРИМЕРИ ОД ПРАКТИКАТА ВО РЕПУБЛИКА МАКЕДОНИЈА	
Сузана Цамтоска-Здравковска, Андон Мајхошев, Јадранка Денкова ...	1277

ЈАЗИЧНИТЕ ОСОБЕНОСТИ НА НОВИНАРСКИТЕ ТЕКСТОВИ КОИ ГИ ТРЕТИРААТ ЕВРОАТЛАНСКИТЕ ИНТЕГРАЦИИ	
Светлана Јакимовска .....	1297

ЈАЗИЦИТЕ- МОСТОВИ И СИДОВИ ВО КОМУНИКАЦИЈАТА	
Драгана Кузмановска, Биљана Иванова, Снежана Кирова .....	1311

ANALYSIS OF THE DEVELOPMENT OF THE CONCEPT OF THE INFORMATION SOCIETY IN WORKS BY Y. MASUDA, M. CASTELLS, W. G. MARTIN	
Anastasia Vasiliyevna Petukhova, Svetlana Krepyshcheva.....	1317

DEMETROPOLIZATION OF CULTURE IN THE PRINT MEDIA IN MACEDONIA	
Andon Majhoshev, Suzana Dzamtoska-Zdravkovska .....	1325

# **GROWING IMPORTANCE OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION IN SAFEGUARDING HUMAN RIGHTS**

**Zaneta Poposka**

Assistant Professor, Faculty of Law, State University Goce Delchev, Shtip,  
Macedonia

e-mail: [zaneta.poposka@ugd.edu.mk](mailto:zaneta.poposka@ugd.edu.mk)

## **Abstract**

The Charter of Fundamental Rights of the EU solemnly proclaimed at the Nice European Council in 2000 became binding primary EU legislation in 2009 with the entering into force of the Treaty of Lisbon. The Charter is modern codification and contains rights and freedoms under six titles: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice. The institutions and bodies of the EU with due regard for the principle of subsidiarity and the national authorities when they are implementing EU law, have a legal obligation to ensure respect for fundamental rights enshrined in the Charter.

This paper explores the legal nature, structure, content and scope of application of the Charter. In addition, the paper elaborates the position of the Charter in the existing European Union law, specifically its applicability in front of the Court of Justice of the European Union and at national level in the Member States. Furthermore, the paper analyzes the interplay with other human rights instruments such as the European Convention on Human Rights and identifies the key challenges in that regard. Finally, the paper presents ways forward in increasing the importance of the Charter in safeguarding the fundamental rights, ensuring equality and combating discrimination through awareness-raising, including the Charterpedia, and the use of the Charter in national policy-making. The text uses reports and results from research and survey that have been conducted in the European Union and draws conclusions from the case law of the Court of Justice of the European Union.

**Key words:** *Charter, equality, human rights, legislation*

## INTRODUCTION

The Charter of Fundamental Rights of the European Union (hereinafter: the Charter) was prepared between December 1999 and October 2000 within a body – which decided to call itself ‘Convention’ – composed of representatives of the governments of the European Union Member States, members of national parliaments, the European Parliament, and the European Commission, and with observers from the Court of Justice of the European Union and from the Council of Europe. It was agreed upon by consensus within that body (Commentary of the Charter, p.15). It was then, in December 2000, the Charter solemnly proclaimed by the Council, Parliament and the Commission as a legally non-binding instrument but with a nature of an inter-institutional agreement, which as of 1 December 2009 become binding for EU Member-States, by becoming an integral part of the Treaty of Lisbon as provided with Article 6(1) of the Treaty on European Union (Poposka, 2012, p.159). The Charter is modern codification and in a single document contains series of individual rights, freedoms and principles under six titles: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice, which according to the Charter itself has been updated “in the light of changes in society, social progress and scientific and technological developments by making those rights more visible”. For the first time, members of the College of Commissioners swore a solemn declaration to uphold the Charter as well as the Treaties in May 2010.

In this regard the Charter entrenches: the rights and freedoms enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR), the Social Charters adopted by the Union and by the Council of Europe and the case law of the European Court of Human Rights, all the rights found in the case law of the Court of Justice of the EU, and other rights and principles resulting from the common constitutional traditions of EU countries and other international instruments. And in this context the Charter should be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention (Charter, Preamble). As elaborated in the Commentary of the Charter, this approach of the interpretation of the Charter in accordance with the existing *acquis* of international and European human rights law presents a number of advantages: it contributes to legal certainty, by facilitating an understanding of the requirements of the Charter based on the instruments in which the drafters of the Charter sought their inspiration; it limits the risks of conflicting obligations being imposed on the EU Member States, respectively under Union law and under the international human rights treaties they are parties to; and it ensures that when the Union itself will seek to accede to these instruments, the European legislation will generally be compliant with those instruments, thus facilitating such accession as

any conflicts should already have been identified and dealt with on the basis of the Charter.

However, the Charter has its limitation in its application, only on the institutions and bodies of the Union with due regard for the principle of subsidiarity, and to the Member States only when they are implementing the Union law, and only within the framework of existing powers and tasks of the EU. In cases where the Charter does not apply, the protection of fundamental rights is guaranteed under the constitutions or constitutional traditions of EU countries and international conventions they have ratified. Thus, the Charter complements, but does not replace, national constitutional systems or the system of fundamental rights protection guaranteed by the European Convention on Human Rights.

## **1. LEGAL NATURE AND SCOPE OF APPLICATION OF THE CHARTER**

The Charter is divided into six titles organized to reflect the importance of the principles of the European Union as follows: Dignity (Articles 1-5), Freedoms (Articles 6-19), Equality (Articles 20-26), Solidarity (Articles 27-38), Citizens' Rights (Articles 39-46), and Justice (Articles 47-50). Complementary, the Charter enlist also General Provisions (Articles 51-54).

### **1.1. Field of application and level of protection**

As provided in Article 51(1) the Charter applies to the institutions and bodies of the European Union. Thus concerns in particular the legislative and decision-making work of the Commission, Parliament and the Council, the legal acts and policy of which must be in full conformity with the Charter. In addition, the Charter applies to the Member States when they are implementing EU law. What 'implementing EU law' means was extensively elaborated in the *Åkerberg Fransson case*, where the Court of Justice of the EU (hereinafter: the CJEU) considered that the fundamental rights guaranteed by the Charter must be complied with where national legislation falls within the scope of the EU law stressing that "the applicability of the European Union law entails applicability of the fundamental rights guaranteed by the Charter" (paragraph 21). Furthermore, the notion of implementing EU law entails not only the cases where the member States have no choice how to implement the EU rule, but cases where they enjoy discretion as to the method of implementation, as confirmed by the CJEU in the *NS case*. Strengthened by the judgement in *Melloni case* stating that even in cases where national jurisdictions remains free to apply national standards of protection of fundamental rights, i.e. where an action of a Member State is not entirely determined by EU law,

still the level of protection provided by the Charter and the primacy, unity and effectiveness of the EU law must not be compromised (Ferraro, Carmona, 2015, p.12).

From all above can be observed that the CJEU understands broadly the meaning of the notion '*implementing EU law*'. However, even with this understanding still the field of application has its own limits. Namely, as clarifies in Article 51(2) the Charter cannot extend the field of application of EU law or any competences of the EU as defined in the Treaties, further codifying the so-called '*principle of conferral*' by which "the Union shall act only within the limits of the competences conferred upon it by the Member States in the treaties to attain the objectives set out therein" (TEU, Article 5).

As claimed by Fabbrini, the Charter "codifies the idea of the floor of protection according to which the EU law sets a minimum which Member States are free to exceed" i.e. the Charter aims to provide the minimum standard of fundamental rights protection allowing for wider protection under instruments other than the Charter as far as the domain at stake has not been harmonised at EU level, as *Radu case* and *Melloni case* judgements are proving (Fabbrini, 2014, p.39). Namely, Article 53 ensures that nothing in the Charter will be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised by Union law, international law and international agreements to which the Union or all the Member States are party, including the ECHR.

### **1.2. Scope of application of the Charter**

The scope of guaranteed rights under the Charter is very essential, thus stipulating in Article 52(1) that any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law, respect the essence of those rights and freedoms, and subject to the principle of proportionality, i.e. limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. The CJEU elaborated upon these limitations in *Schecke case*, *Test-Achats case*, and *Digital Rights Ireland case*. Namely, in *Schecke case*, the Court discussed the proportionality criteria and the proper balance between the right to transparency and the right to protection of personal data of natural persons, annulling EU rules because the Council and the Commission exceeded the limits of proportionality. The Court stressed that the derogation from the Article 7 and 8 of the Charter apply only when strictly necessary. The same reasoning was used in the *Digital Rights Ireland case* where the Court annulled the Data Retention Directive on account of violation of the principle of proportionality when limiting the Article 7 and 8 (privacy and data protection) under the Charter. And finally, in

the so-called *Test-Achats case*, the CJEU partially annulled the Directive 2004/113 dealing with insurance services on account of discrimination between women and men, in violation of Articles 21 and 23 of the Charter because the measure recognised an unlimited transitional period for the Member States. As analysed by Ferraro and Carmona the Court considered contrary to the achievement of the objective of equal treatment between men and women, and thus incompatible with Articles 21 and 23 of the Charter this provision of the Directive, enabling the Member States to maintain, without temporal limitation, an exemption from the rule of unisex premiums and benefits (Ferraro, Carmona, 2015, p.20).

As stated in the Article 52(2) rights recognised by this Charter which are based on the Treaties shall be exercised under the conditions and within the limits defined by those Treaties. Thus, the scope of the EU law is the one that determines the EU jurisdiction on fundamental rights as well as its content. And because of that, where a particular right is regulated in the Treaties and the Charter simultaneously, the both references should be taken on board by the legislature. This will be the case for *inter alia* non-discrimination, data protection, access to documents, and the corpus of rights deriving from the EU citizenship.

Article 52(3) states that the Charter contains rights which correspond to rights guaranteed by the ECHR, and clearly provides that the meaning and scope of those rights shall be the same as those laid down by the Convention. However, this provision shall not prevent Union law providing more extensive protection. Thus the Charter encourages dialogue between the Court of Justice of the EU and the European Court of Human Rights. This cooperation arose from the *NS* judgement by the Court of Justice as well as *MSS v. Belgium and Greece* ruling by the European Court of Human Rights. As Ferraro and Carmona argues "these demonstrate that both of the European courts consider that the principle of mutual recognition of measures adopted by EU Member States is refutable when there is a systemic violation of fundamental rights by the requesting state and that the strict application of the Dublin Regulation in cases where Member States were aware of a risk of ill-treatment was incompatible with the human rights obligations of those states" (Ferraro and Carmona, 2015, p.15).

## **2. THE POSITION OF THE CHARTER IN THE EXISTING EUROPEAN UNION LAW**

### **2.1. Application of the Charter in front of the Court of Justice of the European Union and at national level in the Member States**

The Charter has been increasingly referred by the CJEU and national courts and, as judge Safjan underlines not only as simply ornamental but as an influence in the process of interpretation of the norms and the effect of its implementation, thus

broadening the field of application of the European rules in the national context (Safijan, 2014, p.2). Namely, in 2014 a total of 210 decisions in EU Courts quoted the Charter, compared with 43 in 2011, 87 in 2012 and 114 in 2013.

As can be seen from the elaborated case law of the Court of Justice of the EU, the Member States are under a duty when transposing directives into their domestic legal orders to take respect of the EU fundamental rights extending it to the interpretation of the national implementing measures as well. As Arestis argues "Member States should act as an instrument of the decentralised administration of the Union whenever they apply or implement a regulation, transpose a directive, execute a decision of the Union or a judgment of the Court". Even in cases where particular aspect falling within the EU competences is left unregulated under the EU law, such as the issue of administrative or criminal sanctions, or effective judicial protection, it is for the Member States to ensure the full effect of the EU measures in conformity with the EU Treaties. If this is not the case, the Commission can open infringement proceedings against the respective Member State according to Articles 258-260 TFEU. As an illustration, only in 2014 the Commission has referred to the Charter in 11 cases of infringement proceedings, *inter alia* on segregation of Roma children in education as a violation of the Racial Equality Directive and Article 21 of the Charter which prohibits discrimination based on race and ethnic origin.

From another side, the national courts are aware on the Charter as an instrument to ensure compliance with fundamental rights by Member States and the possibility for referral to the CJEU for a preliminary ruling. Only in 2014 there have been 43 such referrals for a preliminary ruling from national court. As an illustration, in December 2014 in the case *A, B, C v Staatssecretaris van Veiligheid en Justitie* the CJEU ruled on questions referred on the methods used to assess the credibility of declared sexual orientation of asylum applicants founding that the Asylum Qualification Directive and the Charter impose limits as regards verification of the sexual orientation of asylum applicants. Namely, nothing can be required of applicants that would undermine their human dignity or personal integrity, such as intrusive, humiliating medical or pseudo-medical tests, intrusive questioning, or requiring/accepting photographic or video evidence of sexual practices. As stated in the *2014 Report on the Application of the EU Charter of Fundamental Rights*, this judgment enables national authorities to assess applications in a more consistent manner, while ensuring full respect of fundamental rights (2014 Report, 2015, pp.12-13).

Finally, practice shows that the Member State high courts are referring to the Charter for guidance and inspiration. According to the research by the Fundamental Rights Agency (FRA) this practice continues in 2014. Namely, FRA in its 2014 annual report analyses 65 court decisions from 25 Member States where the Charter in



invoked proving that the Charter is referred even in cases which fell outside the scope of EU law (FRA 2014 annual report, 2015, p.175).

## **2.2. The interplay of the Charter with other human rights instruments**

The Charter interplays with other human rights instruments, most important being the European Convention on Human Rights. The Union's accession to this Convention was made obligatory by the Lisbon Treaty as provided in Article 6(2) TEU and made possible by introducing Protocol 14 to the ECHR. In April 2013, the draft agreement on accession of the EU to the ECHR was finalised and on 18 December 2014 the Court of Justice of the European Union delivered its Opinion 2/13 on the draft agreement. Unfortunately, the CJEU identified problems with regard to its compatibility with EU law and declared the draft accession agreement not compatible with Article 6(2) TEU or with Protocol (No 8) relating to Article 6(2) TEU. The main concerns the Court had are the following: the agreement could threaten the specific characteristics of the EU as a new legal order with its own constitutional framework and founding principles as well as of the primacy of EU law; the agreement can upset the balance of the EU and undermine the autonomy of the EU law by jeopardising the mutual trust among the member States; the interpretation of fundamental rights should be ensured within the framework of the structure and objectives of the EU; and laying down higher standards of protection by the States than those guaranteed by the Convention provided with Article 53 of the ECHR should not threaten the level of protection provided for by the Charter and the primacy, unity and effectiveness of EU law. As stated in the *2014 Report on the Application of the EU Charter of Fundamental Rights*, these negotiations will continue, as accession to the ECHR is a priority for the Commission (2014 Report, 2015, p.23) and this accession will complement the system of protection of human rights by making the European Court of Human Rights competent to review EU measures while taking account of the Union's specific legal order.

Fundamental rights have been a crucial element of relations between the EU and the United Nations as well. For example: the EU is a party to the UN Convention on the Rights of Persons with Disabilities (hereinafter: the CRPD). The EU signed the CRPD on 30 March 2007, while on 26 November 2009, adopting Decision 2010/48/EC, the Council of the EU authorized the EU to accede to the Convention, which the EU did on 23 December 2010, becoming the 97<sup>th</sup> contracting party to the Convention. The Convention entered into force for the EU in January 2011. The CRPD is a mixed agreement, which involves contractual relations between the EU, its Member States and one or more third countries and/or international organizations. As a mixed agreement, the CRPD covers areas, which are part of the EU competences, are also part of the competences of EU Member

States and are part of the shared competences of the EU and its Member States. Therefore, it is of the utmost importance to establish close cooperation between the EU and its Member States in order to apply the legislation stemming from the CRPD in a coherent manner and to attain unison international representation of the Union. When participating in mixed agreements, EU Member States do not act as fully autonomous subjects of international law and they are under the duty for legal cooperation among themselves and with the EU covering the process of negotiations, ratification and application. In case a Member State does not undertake all relevant measures for application of provisions of mixed agreements, which are part of the EU competences, such as the CRPD, not only it shall fail in fulfilling its international obligations, but it will also violate the EU legislation. In such a case, the European Commission may institute proceedings against that state for violation of the EU law (Poposka, 2012, pp.255-278).

Whereas there is no legal obligation in the Charter to align interpretation with United Nations treaties, the CJEU does refer to UN instruments for interpretation of rights under EU law. For example: the wording of the CRPD inspired the CJEU in the *Kaltoft case* as to the definition of the concept of 'disability' in its assessment whether morbid obesity may amount to a 'disability' for the purposes of the Equal Treatment in Employment Directive.

### **3. WAYS FORWARD IN INCREASING THE IMPORTANCE OF THE CHARTER**

In 2010, the Commission adopted the Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, as said "in the new legal environment existing since the entry into force of the Lisbon Treaty" (The Strategy, 2010, p.3). The Strategy aims at monitoring and ensuring the effective implementation of the rights and freedoms enshrined in the Charter by guaranteeing that at every step, from the EU legislative process to the application of EU law at the national level, the rights and principles of the Charter are taken into account, and by improving EU citizens' understanding of fundamental rights protection within the EU, providing them with concrete information on possible remedies and the role of the Commission in this field. And since 2010 the Commission staff have to take into account the so-called Check list, which mirrors Article 52(1) of the Charter.

In this regard the Commission developed *Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments* for the impact assessment of new legislative proposals from the point of view of observance of the Charter, as well as the Council concluded *Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies*.

But the Union does not stop only with its legislation; on a contrary they are bound by obeying the Charter in the process of managing of EU funds, as well as in the external actions of the Union.

Complementary to the legislation, there is a need to foster awareness on the Charter and thus the second prong of the Strategy touch upon this challenge. There is a low level of awareness what the Charter stands for by the general population of the Union. This is proven by the findings from the Eurobarometer survey showing that only 14% of respondents actually knew what the Charter is about, 51% of respondents had heard about the Charter but did not know exactly what it is. The Eurobarometer survey also highlights the need to raise public awareness and in this regard FRA undertook the implementation of projects such as *Charter Click*, *Charterpedia* and *Clarity project* aiming at increasing the awareness about the Charter.

### CONCLUSIONS

The Charter is an innovative instrument because it brings together in one text all the fundamental rights, freedoms and principles protected in the European Union, making them visible and predictable. Since the entry into force of the Lisbon Treaty, the Charter became binding upon the EU institutions when adopting new measures, as well as for Member States during implementation of the EU law. From the case law of the Court of Justice of the EU it can be observed that the Court understands broadly the meaning of the notion '*implementing EU law*'. However, even with this understanding still the field of application of the Charter has its own limits in the competences of the Union defined in the Treaties.

In addition to this, the Charter as a newest source of human rights law has complicated relationship with the existing human rights instruments on universal and regional level, especially in the interplay with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Finally, the Charter steadily has gaining importance by being increasingly referred by the Court of Justice of the EU and Member State high courts and, as judge Safjan underlines not only as simply ornamental but as an influence in the process of interpretation of the norms and the effect of its implementation, thus broadening the field of application of the European rules in the national context. Its full potential still needs to be seen.

### BIBLIOGRAPHY

- Arestis G. 2013. *Fundamental rights in the EU: three years after Lisbon, the Luxembourg perspective*. College of Europe, Brugge. [online] Available at: <<https://www.coleurope.eu/>> [Accessed 20 October 2015].
- Charter of Fundamental Rights of the European Union. 2000. Solemn Proclamation by the President of the European Parliament, the European Commission and the Council of Ministers, Nice. *Official Journal C 364/1*, 7 December 2000. [online] Available at: <[http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)> [Accessed 10 September 2015].
- Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities), OJ L 23, 27 January 2010. [online] Available at: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:023:0035:0061:EN:PDF>> [Accessed 20 September 2015].
- Court of Justice of the European Union, *A, B, C v Staatssecretaris van Veiligheid en Justitie*, Joined Case C-148/13, C-140/13 and C-150/13, 2 December 2014. [online] Available at: <<http://curia.europa.eu/juris/document/document.jsf?docid=160244&doclang=en>> [Accessed 21 October 2015].
- Court of Justice of the European Union, *Åklagaren v Hans Åkerberg Fransson*, Case C-617/10, [2013], 26 February 2013.
- Court of Justice of the European Union, *Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres*, Case C-236/09, 1 March 2011. [online] Available at: <<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-236/09>> [Accessed 21 October 2015].
- Court of Justice of the European Union, *Ciprian Vasile Radu*, Case C-396/11, [2013], 29 January 2013. [online] Available at: <<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d55d95990cccdd4900bfbbb625bf82e856.e34KaxiLc3eQc40LaxqMbN4Oc30Se0?text=&docid=132981&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=598420>> [Accessed 21 October 2015].
- Court of Justice of the European Union, *Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources, Minister for Justice, Equality and Law Reform*, Case C-293/12, 8 April 2014. [online] Available at: <<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30dd>>

58da953e5b274227adb5d9e09999c717.e34KaxiLc3qMb40Rch0SaxuRbxn0?t  
ext=&docid=153045&pageIndex=0&doclang=EN&mode=req&dir=&occ=firs  
t&part=1&cid=943084> [Accessed 21 October 2015].

Court of Justice of the European Union, *Fag og Arbejde (FOA), acting on behalf of  
Karsten Kaltoft v Kommunernes Landsforening (KL)*, Case C-354/13, 18  
December 2014. [online] Available at:  
<[http://curia.europa.eu/juris/document/document.jsf?  
docid=160935&doclang=EN](http://curia.europa.eu/juris/document/document.jsf?docid=160935&doclang=EN)> [Accessed 21 October 2015].

Court of Justice of the European Union, *N. S. v Secretary of State for the Home  
Department*, Case C-411/10, [2011], 21 December 2011. [online] Available  
at: <[http://eur-lex.europa.eu/legal-  
content/EN/TXT/PDF/?uri=CELEX:62010CJ0411& from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62010CJ0411&from=EN)> [Accessed 21  
October 2015].

Court of Justice of the European Union, *Stefano Melloni v. Ministerio Fiscal*, Case  
C-399/11, [2013], 26 February 2013. [online] Available at: <[http://eur-  
lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0399:EN:HT  
ML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0399:EN:HTML)> [Accessed 21 October 2015].

Court of Justice of the European Union, *Volker und Markus Schecke GbR and  
Hartmut Eifert v Land Hessen*, Case C-92/09 and C-93/09, 9 November 2010.  
[online] Available at:  
<<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-92/09>> [Accessed  
21 October 2015].

Eurobarometer 416. 2015. *The Charter of Fundamental Rights of the European  
Union*. [online] Available at: <[http://open-  
data.europa.eu/en/data/dataset/S2063\\_416\\_ENG](http://open-data.europa.eu/en/data/dataset/S2063_416_ENG)> [Accessed 21 October  
2015].

European Commission. 2005. *Compliance with the Charter of Fundamental Rights  
in Commission legislative proposals - Methodology for systematic and  
rigorous monitoring*, COM(2005) 172 final.

European Commission. 2010. *Operational Guidance on taking account of  
Fundamental Rights in Commission Impact Assessments*. SEC(2011) 567  
final. [online] Available at: <[http://ec.europa.eu/justice/fundamental-  
rights/files/operational-guidance\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/operational-guidance_en.pdf)> [Accessed 21 September 2015].

European Commission. 2010. *Strategy for the effective implementation of the  
Charter of Fundamental Rights by the European Union*. [online] Available at:  
<[http://eur-  
lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0573:FIN:en:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0573:FIN:en:PDF)>  
[Accessed 21 September 2015].

- European Commission. 2015. *2014 report on the application of the EU Charter of Fundamental Rights*. [online] Available at: <[http://ec.europa.eu/justice/fundamental-rights/files/2014\\_annual\\_charter\\_report\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/2014_annual_charter_report_en.pdf)> [Accessed 21 September 2015].
- European Commission proposal COM (2008)530 Proposal for a Council Decision concerning the conclusion, by the European Community, of the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities. [online] Available at: <[http://ec.europa.eu/prelex/detail\\_dossier\\_real.cfm?CL=en&DosId=197349](http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=197349)> [Accessed 20 September 2015].
- European Council. 2015. *Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies*. ST 53772015 INIT. [online] Available at: <<http://data.consilium.europa.eu/doc/document/ST-5377-2015-INIT/en/pdf>> [Accessed 21 October 2015].
- EU Network on Independent Experts on Fundamental Rights. 2006. *Commentary on the Charter of Fundamental Rights of the European Union*. [online] Available at: <[http://ec.europa.eu/justice/fundamental-rights/files/networkcommentaryfinal\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/networkcommentaryfinal_en.pdf)> [Accessed 20 September 2015].
- Fabbrini F. 2014. *Fundamental rights in Europe. Challenges and Transformations in Comparative Perspective*. Oxford University Press, Oxford.
- Ferraro F., Carmona J. 2015. *Fundamental Rights in the European Union. The role of the Charter after the Lisbon Treaty*. European Parliamentary Research Service, Brussels.
- Fundamental Rights Agency. *Fundamental rights: challenges and achievements in 2014*. [online] Available at: <[http://fra.europa.eu/sites/default/files/fra-annual-report-2014\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-annual-report-2014_en.pdf)> [Accessed 20 October 2015].
- Peers S., Hervey T., Kenner J., Ward A. (eds). 2014. *The EU Charter of Fundamental Rights*. Hart Publishing.
- Poposka Z. 2012. *Disability discrimination in the international human rights law [Дискриминација врз основ на хендикеп во меѓународното право за правата на човекот]*. Универзитет "Св.Кирил и Методиј" – Скопје, Правен факултет "Јустинијан I".
- Safjan M. 2014. *Fields of application of the Charter of Fundamental Rights and constitutional dialogues in the European Union*. EUI Law, Center for Judicial cooperation.

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. *Official Journal C 306/01*, 13 December 2007. [online] Available at: <[http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:COM:EN: HTML](http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:COM:EN:HTML)> [Accessed 10 September 2015].