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Recent Perspectives on the Application of Minimum Standards for the Protection of Social Rights in the European Union

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Abstract: *This paper focuses on the analysis of workers' social rights from the perspective of compliance with the minimum standards of protection ensured at EU level. The key values respected by the European Union are: human dignity, freedom, democracy, equality, the rule of law and not least human rights. With this central concern at its heart, the Union has sought to adopt, including at the normative level, a flagship document which, at the same time, represents a minimum set of human rights protection standards.*
Among these, the paper highlights social rights, which are expressly enshrined in the Charter, and traces the current evolution of this category of rights, analyzing the 2024 Commission Report on the Charter, in the framework of the Stategy for strengthening the application of the Charter of Fundamental Rights, as well as the opinion of the EU Agency for Fundamental Rights, which has become a trusted body providing comparative data and analysis on fundamental rights to support the work of the EU institutions and Member States.
The paper also points out that the fundamental document has led to the adoption of new EU legislation that expressly protects certain fundamental rights such as data protection, gender equality and, more recently, rights deriving from the use of artificial intelligence, but this protection is not self-evident, as new challenges have emerged in recent years, for example in the areas of migration, health or security.

Keywords: *minimum standards, social rights, workers, The Charter of Fundamental Rights.*

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Introduction

The European Union has developed a complex system for the protection of human rights, at the center of which is undoubtedly the Charter of Fundamental Rights, one of the most modern systems in this field. The development of the Charter aimed to make rights more visible to citizens but also to increase the perception of the EU's legitimacy by providing a common bill of rights (Pérez, 2017). This system of protection has evolved significantly, from the silence of the founding treaties to the development of human rights as general principles of law, protected by the CJEU. The Charter of Fundamental Rights of the European Union, proclaimed in 2000, became legally binding in 2009 through its attachment to the Lisbon Treaty.

At the same time, fundamental rights are protected in a different framework in the EU compared to the system established by the Council of Europe. Even though the European Union is not *per se* a human rights organization and did not have this established competence to protect fundamental rights, the latter have come to occupy an important place in the European legal order (Beijer, 2017)

Certainly, the principle of equal protection of citizens of the Member States has been seen as a strong argument for a common declaration of rights. It has been pointed out in the legal literature that in particular the full realization of free movement requires ensuring that citizens of the Union enjoy equal protection wherever they move or take up residence, and the key to the interpretation of fundamental rights may lie in the judicial dialogue between the CJEU and national courts (Pérez, 2017).

The need for minimum standards for the protection of fundamental rights

The establishment of minimum standards in the field of fundamental rights was not initially a priority for the founding states of the European Communities, but with the development of Community law, they have entered the Union's regulatory sphere and today represent one of the most important chapters on the European agenda.

At the international level, minimum standards of protection represent that minimum level of protection and respect for human rights by states as subjects of international law, including a set of legal, organizational and institutional safeguards prohibiting arbitrary restrictions. In general, minimum standards are defined by documents of universal international organizations, in particular treaties. Standards on economic, social and cultural rights were

first enshrined in the Universal Declaration of Human Rights and are central to the approach to social protection. The adoption of a suite of rights as a key element in social protection is crucial for achieving universal social protection and ensuring social justice (Cecchini et al., 2013).

As a corollary, international legal standards also establish positive obligations for States to protect them. In the doctrine, they have been defined as textually and functionally unified universal norms, which by means of very abstract, often evaluative key terms, capture the content and minimum necessary or desirable extent of human rights, conditional on the achieved level of social development and its dynamics, while also establishing positive obligations of states to ensure, protect and defend them and providing for sanctions of a political-legal or political nature for their violation (Nalyvaiko et al., 2023).

Returning to the European level, the establishment of minimum standards of protection appears to be essential to ensure uniform and effective protection in all Member States, acting as a safety net for citizens. In practical terms, minimum standards respond to three problems: they protect rights uniformly, ensuring that every citizen benefits from a basic level of protection, regardless of the Member State in which they are located; they avoid legal conflicts, as the coexistence of several legal systems can potentially generate conflicts; they strengthen mutual trust, reinforcing this principle which is essential for the functioning of the Union.

The success of the European Union, built on the protection of individual rights, qualifies it as a "community based on the rule of law" (ECJ, Opinion 1/91 in which the Commission asked the Court for its opinion on the compatibility of the provisions of the EEC Treaty with a draft agreement on the creation of the European Economic Area and, in particular, with the jurisdictional mechanism that this agreement intends to create). Thus, European citizens may challenge the existence of asserted and protected rights, such as the right to free movement of persons, services, goods and capital, the right to equal treatment, the freedom to engage in trade or professional activities, the right to work, etc., to the national and European authorities (Court of Justice of the European Comunities, 1991).

The guarantees established for the fundamental social rights of individuals have been strengthened to ensure the effectiveness of this European construction, for example: the implementation of the right to equal treatment is regulated and controlled through social and labor law, the right to fair working conditions, paid annual leave, are defined as inalienable by the decisions of the CJEU (Gerhard Schultz-Hoff v Deutsche Rentenversicherung Bund, C-350/06, and Stringer and Others v Her Majesty's Revenue and Customs, C-520/06), the

protection against unfair dismissal, provided by Art. 30 of the Charter of Fundamental Rights, are regulated by secondary or national legislation (Court of Justice of the European Union, 2006).

In the current context, in the same area of fundamental rights, we emphasize the continuous effort to guarantee not only the protection but also the substance or content of certain rights, such as the right to free movement of persons. At the moment, this right to free movement also guarantees access to health or medical care services, obliging States not to intervene unjustifiably and disproportionately in restricting the provision of these services to citizens insured in other States. Such intervention by States, which administratively or economically limits access to health services in an unjustified and disproportionate manner, would have the very effect of restricting the fundamental right to the movement of persons and services (Georgi Ivanov Elchinov v. Natsionalna zdravnoosiguritelna kasa, C-0173/09 and Directive 2011/24/EU on patients' rights in cross-border healthcare). (Court of Justice of the European Union, 2009).

The fundamental social rights affirmed and guaranteed in the European Union (Charter of Fundamental Rights of the European Union, TEU or TFEU) mainly concern social protection, guaranteed working conditions or access to public services. All the above-mentioned documents, together with the case-law of the Court of Justice and its codification in the Charter of Fundamental Rights of the European Union, give fundamental social rights the status of rights with a major social impact. This is why national courts and the Court of Justice of the European Union are called upon to synchronize their decisions, with the sole aim of ensuring that these rights are respected.

The qualification of social rights as fundamental rights links them indissolubly to the human being, which is one of the reasons why the European Union recognizes them in Art. 6 para. 3 of the Treaty on European Union recognizes fundamental rights as general principles, and the Charter of Fundamental Rights of the European Union is the next step to give them concrete content. The Charter of Fundamental Rights of the European Union has strengthened the protection of fundamental rights and made them more visible in the light of changes in society, social progress and scientific and technological developments (Preamble to the CFREU).

Some of the fundamental rights provided for in the fundamental treaties have been transposed into positive law by means of directives (Directive 2011/24/EU on patients' rights in cross-border healthcare), while others allow States to intervene by creating national protection mechanisms (right to collective bargaining and collective action - Art. 27 of the Charter).

The function of fundamental rights in relation to social protection is to limit the discretionary, disproportionate, discriminatory or abusive exercise of public power, and may even prohibit or limit certain actions by States. However, the mere assertion of the existence of these rights does not guarantee that they will be respected. The aforementioned guarantees and the standards created by legislation and case law must be constantly strengthened and adapted to the new realities generated by the transformation of economic models, labor migration, the way in which work is carried out, and also by certain aspects related to economic or pandemic crises.

Applying minimum standards of protection - recent guidelines

The European Commission adopted in December 2020 a Strategy to strengthen the implementation of the Charter of Fundamental Rights in the EU, setting out the directions for the implementation of the Charter for the next 10 years, focusing on four pillars (European Commission, 2020):

- Pillar I. Effective implementation of the Charter by Member States
- Pillar II. Strengthening the role of civil society organizations, human rights defenders and legal practitioners
- Pillar III. The Charter - a reference point for the EU institutions
- Pillar IV. Raising awareness among European citizens

The Strategy complemented the Action Plan on European Democracy and the first Rule of Law Report, both adopted in December 2024, in a bid to strengthen democratic resilience and reinforce a culture of the rule of law.

In the latest Report, the European Commission (2024) emphasizes that the document is dedicated to funding for the promotion, protection and enforcement of fundamental rights. The Commission envisages in particular, in line with the case law of the CJEU, the elaboration of programming documents, the setting up of management, monitoring and control systems, the implementation of programs and the undertaking of concrete actions outlined in a project description.

It is worth emphasizing in this context that the case law referred to in the Report, the Court's judgment of 17 September 2014 in Case C-562/12, attests that any restriction on the exercise of the rights and freedoms recognized by the Charter must be provided for by law and respect the substance of those rights and freedoms and that, "*in compliance with the principle of proportionality, restrictions may be imposed only if they are necessary and only if they effectively meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others"* (Court of Justice of the European Union. (2014).

The European Union Agency for Fundamental Rights (FRA) works with both the European Commission and the Union's institutions and Member States to provide independent expert advice and an annually updated fundamental rights analysis.

In addition to the analysis of the financing of fundamental rights in the Member States, the Charter Report is an opportunity to take stock of the implementation of the Charter Strategy, which is of interest in identifying developments in the application of fundamental and, by implication, social rights within the Union (European Union Agency for Fundamental Rights, 2024). Recalling the funding, we emphasize that the Union program that effectively aims to protect the rights and values enshrined in Union law is the Citizens, Equality, Rights and Values (CEDV) program, substantially increased for the period 2021-2027, as reflected in the image below. However, budgetary constraints have led to over-subscribed calls for proposals, with only between 8% and 17% obtaining funding, with CSOs accounting for 60% of beneficiaries. Also as statistical information, we show that as of 2021, almost 4 000 CSOs from all Member States have received support from the program.

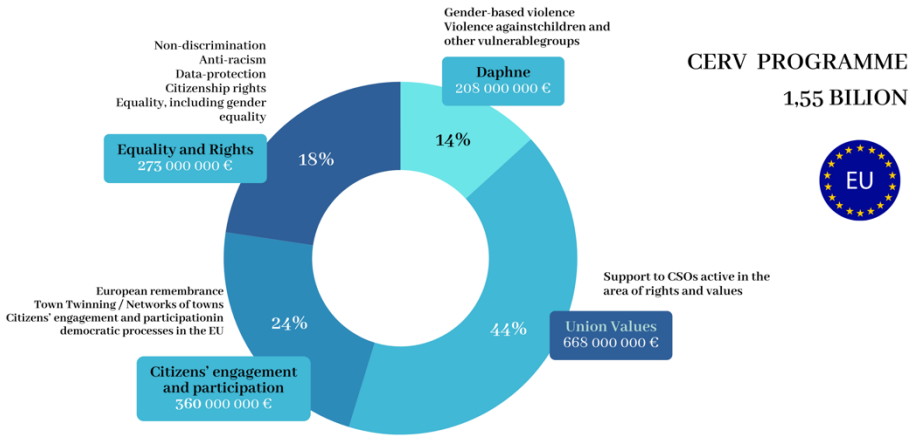


Figure 1. Annual Report on the application of the EU Charter of Fundamental Rights.
Source: European Commission. (2024, October 10). https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52024DC0456

Of course, this is not the only Union program that contributes to the protection of fundamental rights in different policy areas and we mention here the most recent one, the Recovery and Resilience Mechanism (RRM), through

which the EU has created a new generation of funds, the disbursement of which is linked to the achievement of specific objectives and targets.

As a regulatory instrument, "*Regulation (EU) 2021/1060 of the European Parliament and of the Council of June 24, 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Fund for a Just Transition and the European Maritime, Fisheries and Aquaculture Fund and laying down financial rules applicable to these Funds, as well as the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for financial support for border management and visa policy"* contribute to the protection and promotion of fundamental rights by introducing "positive conditionality" for all Funds, a novelty compared to the previous ex-ante conditionalities. In practice, between 2021 and 2027, fundamental rights, among which social rights have a special place, are protected but also promoted through support from the Funds covered by the Regulation (European Parliament, 2021).

There are two types of enabling conditions provided for by the Regulation, horizontal enabling conditions applicable to all Funds and thematic enabling conditions applicable exclusively to the ERDF, CF and ESF. The horizontal Charter enabling condition requires Member States to put in place effective mechanisms to ensure the effective application and implementation of the European document, with Member States being responsible for determining the roles and responsibilities of the different authorities and bodies. Member States are also obliged to provide information on the procedures for cases of non-compliance and complaints, as well as on the composition and rules of procedure of the monitoring committees

For Romania, the Ministry of European Investments and Projects attests that at this stage, the European Commission has accepted as fulfilled all 4 horizontal enabling horizontal conditions: effective public procurement market monitoring mechanisms; tools and capacities for effective enforcement of state aid rules; effective application and implementation of the EU Charter of Fundamental Rights; implementation and enforcement of the United Nations Convention on the Rights of Persons with Disabilities. In terms of thematic enabling conditions, among the 15 that Romania has to fulfill are those related to strategic policy frameworks for active labor market policies; gender equality; social inclusion and poverty reduction; a national Roma integration strategy (Ministry of Investments and European Projects, 2021).

Returning to the Commission's report (European Commission, 2024), it is worth noting how the Commission's efforts to implement the Charter of Fundamental Rights within the Member States by 2024 have materialized:

- Adoption of the previous Annual Report on the application of the Charter, dedicated to effective judicial protection and access to justice;
- Organization of a specific follow-up seminar to exchange good practices and challenges related to effective judicial protection and access to justice;
- Designation, by 26 Member States, of a Charter focal point to promote the effective implementation of the Charter in those Member States. Romania has designated a representative of the Ministry of Justice;
- Organize regular meetings with the Charter focal points and transmit relevant information;
- Training programs for EU staff on the application of the Charter in impact assessments;
- Plan to update the Operational Guidelines on taking fundamental rights into account in Commission impact assessments;
- Initiating the development of a manual to ensure coherent and effective implementation of the horizontal enabling conditions on the Charter, as well as developing publicly accessible online courses;
- Provision of training for legal practitioners on the application of the Charter continued in the framework of the European Judicial Training Strategy 2021-2024;
- Popularization through the European e-Justice portal and the Commission's website of information on fundamental rights;
- Organizing, together with the FRA, a first online event - CharterXchange, which brought together professionals and other participants to exchange views on the application of the Charter;
- The FRA made its Charter tools, available in national languages.

Conclusions

Some authors advocate leaving more discretion to national authorities and treating the fundamental rights of the Charter, implicitly the social ones, as a minimum safety net for the protection of fundamental rights (Spaventa, 2018) while other authors consider that the existence of a set of common rights and values in the field of fundamental rights of individual and collective nature, as well as the establishment of a uniform standard of protection, appears as an indispensable complement to the process of European integration (Cannizzaro, 2017).

The conclusions of the Commission's 2024 Report attest to the need for capacity-building for those who have a role in implementing the Charter in everyday life, but funding is certainly one of the main means, as funded projects turn social rights provisions into practical solutions for the benefit of citizens, including vulnerable people. The article aimed to analyze the most recent guidelines in the field of minimum standards for the protection of social rights, which are essential standards for the rights of European citizens.

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