

## REVIEWS AND ANNOTATIONS

### **Mazák J. – Jánošíková M., and others. The Charter of Fundamental Rights of the European Union in Proceedings before Courts of the Slovak Republic. Košice: EQUILIBRIA, s.r.o., 2016, 280 p.**

This presented monograph is a significant interconnection of the theoretical and practical level of effective application of the Charter of fundamental rights in judicial proceedings in Slovak Republic. The reviewed work is the main output of an academic project no. APVV-0814-12 supported by Slovak Research and Development Agency, focused on “The binding force and applicability of the Charter of Fundamental Rights of the European Union for a Member State and within a Member State with specific regard to judicial power in the Slovak Republic”. The composition of the team of researchers is an interconnection between the theoretical and practical legal experience with fundamental rights protection, constitutional order of Slovak Republic, constitutional law of the European Union and experience with theoretical basis of a state and law.

The monograph is divided into ten chapters. Outputs of research are contained in the first four chapters and others offer table of cases of the Court of Justice, of the Slovak Constitutional Court, Slovak general courts and cases of courts of other member states, which were used in period of writing. The monograph ends with a bibliography and a table of outputs of the research team during the research period. During this study, the research team analyzed thousands of decisions which contain the expression “the Charter of Fundamental Rights of the European Union”. They chose several decisions which supplement the contents of the entire monograph. The aim of the research is focused on finding how the Charter is applied and interpreted in terms of the Slovak Republic in connection with fundamental rights and freedoms protection and in correlation with Slovak Constitution, Convention of Human Rights or other Human Rights Treaties. We must state that the objective has been clearly fulfilled, when we look deeply at each chapter content. Chapter one is focused on the specific character of the Charter, which cannot be considered as a typical international agreement. The Charter complements national and international systems of fundamental rights and freedoms protection, which legal force belongs to the European Union primary law. An important fact is that the principal aim of the Charter was defined by the Court of Justice before the Charter was legally binding. Within this section, the authors point to the entire structure of the Charter including the changes, which have occurred in its development and to resources on which the Charter was conceived. Second part of this chapter is oriented on interpretation and application of the Charter in each member state of the European Union including general principles formulation as that articles of the Charter cannot be applied in any cases, but only in these types of cases where at last one rule of European Union law is applied as minimum *sine qua non*. Pointing to the importance of precise application of Article 51 of the Charter and clarification of its meaning.

Equally, the level of fundamental rights and freedoms protection under the Charter is the subject of research by analyzing case Melloni.<sup>1</sup> Big part of the first chapter is focused on assessment of the role and options of the Charter application in proceedings before Court of Justice and national courts. This part is largely supplemented by cases of the Court of Justice and national courts pointing to important judgment articles, which contain arguments about appraisal of the role and application of the Charter. Likewise, this chapter is oriented on relation assessment between the Charter and general principles of law and also on relation between the Charter and the Convention on Human Rights and the Constitution. The question of their mutual position can be best answered by assessing their relationship and application in proceedings before the Court of Justice, since the application of documents by courts best reflects their relationship and interconnection.

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<sup>1</sup> Judgment of 26 February 2013, in Melloni, C-399/11, EU:C:2013:107.

Second Chapter refers to the applicability of the Charter in proceedings before the Constitutional Court and foremost is based on the consideration of the nature and activities of the Constitutional Court. It contains theoretical basis of creation and competences of this judicial body, which are part of the Slovak Constitution. It briefly describes personal composition of the Court, judges' appointments and rules of procedure and decision-making. In order to assess the impact and applicability of the Charter in proceedings before the Constitutional Court, it was necessary to first deal with the issue of the decision-making process and the nature of the Constitutional Court's decisions.

Subsequently, authors research position of the Charter before the Constitutional Court with need of relation assessment of the Charter and other International documents with the Constitution and Slovak legal order in general. Mainly, they explain the issue of primacy and direct application of international treaties regarding article 7 par. 4 and article 7 par. 5 of the Constitution of Slovak Republic relating to basic commitment, that the Slovak Republic acknowledges and adheres to general rules of international law, international treaties by which it is bound, and its other international obligations (art. 1 (2) of Constitution). The authors give the opinion about the Charter assessment in proceedings before the Constitutional Court in connection with article 125 par. 1 and article 127 par. 1 of the Constitution even however the Charter is not a typical international treaty, was not ratified by the president of the Slovak Republic and was not promulgated in the manner laid down by law. This part is complemented by Landmark decision of the Constitutional Court about applicability of the Charter in proceedings under article 125 par. 1 of the Constitution and even the Constitutional Court applies the Charter as referential rule in proceedings under article 127 par. 1 of the Constitution without its express acknowledgment. This chapter is largely complemented by an analysis of specific decisions of the Constitutional Court in matters relating to the application of the Charter in compliance procedures under article 125 (1) and complaints procedures under article 127 (1) of the Slovak Constitution.

Third chapter of this reviewed book offers huge overview of the case law of the Supreme Court and some general courts in the Slovak Republic. It contains overview and analyses of the decisions about preliminary questions as cases *Križan*,<sup>2</sup> *Zeman*<sup>3</sup> or *Široká*<sup>4</sup> before Supreme Court and cases *Pohotovost*,<sup>5</sup> *Kušionová*<sup>6</sup> before general courts. The object of this research is also case law of the Supreme Court and general courts about the Charter interpretative and review functions whether in family matters, in consumer disputes, asylum procedures or matters of health care.

The undisputed benefit of this publication is the fact that each part contains conclusions about examined subject and the last fourth chapter contains both general and specific conclusions regarding the application of the Charter as well as specific recommendations in relation to the Constitutional Court, the Supreme Court and general courts in cases of the interpretation and application of the Charter in proceedings before them. As we stated at beginning, the submitted work deals with huge amount of resources and cases. The monograph operates with structure and concept which represent the comprehensive view on the application of the Charter of fundamental rights and freedoms in conditions of Slovak Republic.

Consequently, we can pronounce the opinion that this monograph has the potential to enrich the library of several experts in theory or practice, who are interested in this issue. Equally, the monograph may be an interesting motion on how to deal with an issue of interpretation or application of the Charter in proceedings before courts of the Slovak Republic in the future.

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<sup>2</sup> Judgment of 15 January 2013, in *Križan and Others*, C-416/10, EU:C:2013:8.

<sup>3</sup> Judgment of 4 September 2014, in *Zeman*, C-543/12, EU:C:2014:2143.

<sup>4</sup> Order of 17 July 2014, in *Široká*, C-459/13, EU:C:2014:2120.

<sup>5</sup> Order of 3 April 2014 in *Pohotovost*, C-153/13, EU:C:2014:1854.

<sup>6</sup> Judgment of 10 September 2014, in *Kušionová*, C-34/13, EU:C:2014:2189.

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