The Charter of Fundamental Rights of the European Union as an Instrument of Judicial Europeanisation

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ABSTRACT

The article examines whether and how the Charter of Fundamental Rights of the European Union, as an autonomous source of EU primary law, can function as an instrument of judicial Europeanisation at the national level. Although the Charter became legally binding with the entry into force of the Lisbon Treaty, its effects on national—particularly constitutional—courts remain relatively understudied. To address this gap, the article develops an analytical framework consisting of four dimensions—doctrinal, institutional, normative, and discursive—conceived as a model for empirical studies of Charter-driven judicial Europeanisation. The usefulness of this framework is tested through an analysis of two decisions of the Slovenian Constitutional Court that engage with EU law and, in that context, with the Charter. While the examination of only two decisions does not permit even partial, let alone comprehensive, conclusions regarding the Europeanisation of constitutional adjudication through the Charter, the findings suggest that the Charter can influence the reasoning of the Slovenian Constitutional Court and that the proposed framework identifies the presence of four dimensions in both decisions analysed. The analytical framework thus helps to identify the possible pathways through which the Charter may influence and co-shape constitutional adjudication.

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Keywords: Charter of Fundamental Rights of the European Union; judicial Europeanisation; constitutional court; Slovenia; case law

Listina Evropske unije o temeljnih pravicah v vlogi instrumenta sodne evropeizacije

POVZETEK

Prispevek preučuje, ali in kako lahko Listina Evropske unije o temeljnih pravicah kot avtonomni vir primarnega prava Evropske unije deluje kot instrument sodne evropeizacije na nacionalni ravni. Čeprav je Listina z uveljavitvijo Lizbonske pogodbe decembra 2009 postala pravno zavezujoča, njeni učinki na nacionalna – zlasti ustavna – sodišča ostajajo razmeroma premalo raziskani. Z namenom zapolnitve te vrzeli je v prispevku oblikovan analitični okvir, sestavljen iz doktrinarne, institucionalne, normativne in diskurzivne dimenzije, ki je zasnovan kot model za empirične raziskave sodne evropeizacije, ki jo spodbuja Listina. Uporabnost tega okvira se preveri na dveh odločbah slovenskega Ustavnega sodišča, ki posegata na področje prava Evropske unije in se v tem kontekstu nanašata tudi na Listino. Čeprav analiza dveh odločb Ustavnega sodišča ne omogoča niti delnih, še manj pa celovitih zaključkov glede evropeizacije ustavnosodne presoje prek Listine, ugotovitve kažejo, da Listina (lahko) vpliva na razlogovanje slovenskega Ustavnega sodišča, vzpostavljeni analitični okvir pa v obeh analiziranih odločbah zazna prisotnost doktrinarne, institucionalne, normativne in diskurzivne dimenzije. Analitični okvir tako prispeva k prepoznavanju možnih načinov, prek katerih Listina (lahko) vpliva na ustavnopravno presojo in jo sooblikuje.

Ključne besede: Listine Evropske unije o temeljnih pravicah; sodna evropeizacija; ustavno sodišče; Slovenija; sodna praksa; ustavnosodna presoja

1. Introduction

In 2019, ten years had passed since the entry into force of the Treaty of Lisbon, which made the Charter of Fundamental Rights of the European Union (the Charter or the EU Charter) a legally binding and part of EU primary law. To commemorate this tenth anniversary, a special issue of the journal *Dignitas* was published. It brought together a series of contributions that highlighted the complexity of the Charter as an instrument for the protection of human rights and fundamental freedoms, while also underscoring its significance and impact. As the then head of the European Commission Representation in Slovenia, Dr. Zoran Stančič, noted at the time, the Charter had become "the pillar of our common European Union" (Stančič, 2019, 8).

The origins of the Charter date back to 1999 (see, e.g. Lindfelt, 2007, pp. 4-11).[1] The instrument was solemnly proclaimed on 7 December 2000 at the Nice European Council Summit by the European Parliament, the Council, and the European Commission. Reflecting on its nature, McCrudden (2001, 7) described the Charter as a concise instrument of fewer than 3,500 words, "elegantly conceived, beautifully drafted, and a masterly combination of pastiche, compromise and studied ambiguity."

At the end of 2025, on the 25th anniversary of the Charter, it is timely to consider whether the Charter serves as an instrument of judicial Europeanisation. Numerous studies on judicial Europeanisation, authored by legal and political science scholars, have compellingly demonstrated how national judiciaries accommodated EU law and how national courts accept—and shape—the EU legal order (e.g. Slaughter,

[1] The composition of the body tasked with drafting the EU Charter had been determined at the 1999 European Council meeting (Tampere European Council, 1999). This body, known as the "Convention", comprised as full members fifteen representatives of the heads of state or government, one representative of the President of the Commission, sixteen Members of the European Parliament, and thirty members of national parliaments. After being amended, the Charter was proclaimed again in 2007.

Stone Sweet, Weiler, 1998; Alter, 2001; Stone Sweet, 2004; 2010; Conant, 2001; Krommendijk, 2021). However, these studies primarily conceptualise Europeanisation through the dynamics of preliminary references, the strategic behaviour of national judges, and the jurisprudential authority of the Court of Justice of the European Union (CJEU). More recent scholarship, such as Frantziou's evaluation of the preliminary reference procedure in human rights cases (2023), highlights the growing importance of fundamental rights as a driver of judicial interaction.

What remains relatively understudied, however, are the effects generated by the EU Charter, as an autonomous source of EU primary law, on national—especially constitutional—courts. After all, Europeanisation may be driven by the Charter, which can be seen as contributing to the constitutionalisation of the European polity. This article therefore addresses whether the Charter can be considered an instrument of judicial Europeanisation and how its Europeanisation effects can be assessed.

The proposed analytical framework addresses the gap in the literature by integrating doctrinal, institutional, normative, and discursive dimensions into a single evaluative model. This enables a more structured and coherent assessment of how the Charter—distinct from broader EU law—influences national (constitutional) jurisprudence, reshapes interpretive practices, and reconfigures the judicial dialogue. In this way, the framework extends existing approaches by examining the Charter-driven judicial Europeanisation that are not captured by the traditional, CJEU-centric analyses prevalent in the literature. The article then applies the framework on a trial basis to assess its suitability for analysing the Europeanisation effects generated by the Charter.

Since the Charter acquired binding legal force, constitutional courts across the EU have increasingly confronted questions regarding its applicability, its relationship to na-

tional constitutions, and its role in the evolving judicial dialogue with the CJEU. The article touches upon these dynamics in the Slovenian context. The use of the Charter before the Constitutional Court of the Republic of Slovenia (the Constitutional Court or the Court) and its potential effects on the Court's case law have so far received only limited systematic attention in the literature (e.g. Bardutzky et al., 2017; Vatovec, 2019; Trstenjak, 2021; Accetto, 2020; Vatovec, Letnar, Černič, 2023). As the article's primary objective is to establish an analytical framework for assessing the Charter's Europeanisation effects, the empirical section examines only two decisions of the Slovenian Constitutional Court that refer to EU law (and, in that context, also the EU Charter). An extensive or exhaustive review of the Court's case law would go beyond the scope of this article, but may be undertaken in future research. Applying the framework even to a small number of significant decisions can nonetheless demonstrate its potential usefulness and illustrate the ways in which the Charter, as an instrument of judicial Europeanisation, may shape and develop the national—here, Slovenian—framework for the protection of human rights and fundamental freedoms.

The article proceeds as follows. Part 2 first conceptualises the phenomenon of Europeanisation in general and then focuses specifically on judicial Europeanisation. Part 3 develops the analytical framework for assessing the effects of the Charter on the jurisprudence of national courts and determining its role as an instrument of judicial Europeanisation. Part 4 presents an empirical application of this framework to two prominent decisions of the Slovenian Constitutional Court. The article concludes by summarising the main findings.

2. Europeanisation and Judicial Europeanisation: Conceptual Framework

Europeanisation is a concept that has been widely explored across various disciplines (such as political science, law, and sociology) and analysed from different perspectives (downloading, uploading or cross-loading), yet its theoretical development has taken place mainly within the field of political science (see e.g. Ladrech, 2002; Radaelli, 2002; Börzel, 1999; Börzel, Risse, 2000; 2003). While its broadest meaning can be traced to early theories of regional integration developed in the 1950s–which sought to explain European integration–its prevailing contemporary use is more narrowly defined and focuses on the effects of this integration on domestic institutions, policies, and political processes (Dosenrode, 2020; see also Ladrech, 2002). Olsen (2002) notably emphasised that Europeanisation "has many faces", highlighting its conceptual ambiguity and even questioning whether the concept is at all useful. As scholars have adopted this concept for diverse purposes, reflecting different analytical perspectives and methodological approaches, Europeanisation has evolved into a multi-layered and often contested analytical tool (ibid.).

One of the foundational conceptualisations of Europeanisation as a process comes from Ladrech (1994), who examined the impact of the European Community (the EC) on France. He defined Europeanisation as "an incremental process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making" (ibid., p. 69). Central to this approach is the notion of organizational logic, understood as the "adaptive processes through which organizations respond to a changed or changing environment" (ibid., p. 71), which highlights the role of adaptation, learning, and policy change in domestic institutions.

Building on this perspective, Radaelli (2002) proposed a comprehensive framework that focuses on the transfer and domestic internalisation of EU rules, norms, and procedures. He identified three key processes (construction, diffusion, and institutionalisation) through which formal and informal rules, procedures, policy paradigms, and shared beliefs are first consolidated in EU policymaking and subsequently integrated into domestic discourse, identities, political structures, and public policies (ibid., p. 108). Radaelli's definition accommodates both organisations and individuals, covering the political scientists' interests, such as political structures, public policy, identities, and the cognitive dimension of politics, and it is applicable to both Member States and countries outside the Union (ibid.). Research on candidate countries or non-member states has explored the EU's influence through mechanisms such as conditionality, socialisation, externalisation, and imitation (e.g. Schimmelfennig, Sedelmeier, 2005; Schimmelfennig, 2010).

Over the past two decades, Europeanisation studies have expanded beyond traditional institutional and policy analysis to include previously underexplored areas such as foreign and security policy (e.g. Gross 2009), political parties (e.g. Mair, 2000; Ladrech, 2002), and social movements (e.g. della Porta, Caiani, 2009).

The concept of Europeanisation has been increasingly applied in legal studies. Scholars have examined the impact of EU law on domestic legal orders, including legislation, judicial practices, and administrative procedures (e.g., Snyder, 2000; van den Brink, 2017). The notion of judicial or legal Europeanisation has emerged to capture the processes through which national courts apply and even internalise EU law, engage in transnational judicial dialogue, and adjust domestic jurisprudence in response to European legal developments, with these processes unfolding differently across courts (e.g., Slaughter, Stone Sweet, Weiler, 1998; Alter, 2001; Kelemen, 2016; Stone Sweet, 2004; 2010; Krommendijk, 2021).

In this context, research focuses on changes within Member States arising from CJEU-driven integration. Indeed, the study of the CJEU's impact has been considered important for both legal scholars and political scientists (e.g., Alter, 2001; Stone Sweet, 2004; Kelemen, 2016; Schmidt, 2018). This is hardly surprising. The CJEU is widely recognised as a driving force behind "integration through law" (Cappelletti, Seccombe, Weiler, 1986). From the earliest stages of European integration, the CJEU has played a fundamental role in shaping not only EU law but also the legal systems of the Member States. Its landmark judgments distinguished the EU legal order from "classic" international law, describing it first as "a new legal order of international law" (CJEU, C-26/62) and later as "its own legal system" (CJEU, C-6/64). Through these and subsequent rulings, the CJEU developed the doctrines of direct effect (CJEU, C-26/62) and primacy (CJEU, C-6/64), thereby transforming the founding Treaty establishing the European Economic Community into the "constitutional charter" of the then European Economic Community (CJEU, C-294/83, para. 23). The preliminary ruling procedure, through which judicial dialogue is primarily conducted, has been regarded as a key driver of judicial Europeanisation (Stone Sweet, Brunell, 1998; Conant, 2001). It is therefore not surprising that the transformation of EU law brought about by the CJEU constitutes a central force in the Europeanisation of national legal and political structures (Schmidt, 2018). This is reflected in the literature, which has examined the CJEU and its jurisprudence not only with regard to their influence on national legal systems (e.g., Alter, 2001; Schmidt, 2018; 2014), but also with respect to their impact on national policy-makers (e.g., Blauberger, 2014).

The CJEU has been only one–albeit an important–actor in this process, shaping the substance of EU law internally while simultaneously promoting the Europeanisation of national judicial systems (see e.g. Constantinou, 2024, 530; Schmidt, 2018). As Dehousse (2000, p. 17) puts it, "if all the

participants in the European political game—EU institutions, national authorities and private interests—are endeavouring to incorporate a legal aspect into their political strategies, that is because they have learned—often to their cost—that the [CJEU] was a force that had to be reckoned with." It was the CJEU's "innovative interpretations", Dehousse argues (ibid., p. 26), that expanded the room for manoeuvre of both national and European political actors on the legal stage, while also empowering private parties to invoke EU law. In this way, the CJEU not only reinforced its own authority but also strengthened the role of national judges (ibid.).

While the CJEU has authority over the interpretation of EU law and is empowered to "ensure that in the interpretation and application of the Treaties the law is observed" (Article 19(1) TEU), the role of national courts is equally important and cannot be overlooked: they ensure the proper application of EU law, safeguard the integrity of the EU legal system, and guarantee the effective enforcement of individual rights derived from EU law.

3. An Analytical Framework for Assessing Charter-Driven Judicial Europeanisation

Building on these insights, judicial Europeanisation can be conceptualised as a multidimensional process encompassing four interrelated dimensions: doctrinal, institutional, normative, and discursive. *Doctrinal Europeanisation* occurs when national courts adapt their jurisprudence and interpretive techniques to EU law, incorporating concepts, modifying established doctrines, and cross-referencing CJEU case law to ensure consistency with EU standards. At the same time, national courts undergo *institutional Europeanisation*, reflected in the evolution of procedural rules, jurisdictional competences, and the role of courts, illustrating how interaction with the supranational legal order can enhance judicial authority, independence, and procedural rigour. *Normative*

Europeanisation, particularly relevant in the context of the EU Charter, constitutes a further dimension. It refers to the convergence of fundamental rights standards and constitutional principles, visible in the growing reliance on the Charter and in the dialogue between national (especially constitutional) courts and the CJEU. Finally, *discursive Europeanisation* manifests itself in the adoption of EU legal vocabulary, argumentative styles, and conceptual frameworks within national judicial reasoning, indicating the integration of elements of the EU's legal culture into domestic judicial practice.

Taken together, these interrelated dimensions form a coherent analytical framework that provides a comprehensive lens for examining how national courts engage with and apply EU law within their constitutional systems.

Besides establishing this analytical framework, we also seek to determine whether—and, if so, to what extent—the Charter has functioned, and still functions, as an instrument of judicial Europeanisation since acquiring binding force (Article 6 TEU). We employ the proposed framework as a model for analysing the Charter's use before national courts. Indeed, the Charter could emerge as a particularly salient instrument of judicial Europeanisation, given that, as Cartabia (2009, pp. 15-17) explains, it possesses both "a legitimizing and hermeneutic effect", positioning it as an instrument capable of connecting and accelerating Europeanisation processes. Although some initially feared that the Charter would restrain the CJEU's creativity, the opposite has proven true: rather than limiting it, the Charter has strengthened the CJEU's "interpretative and creative ability" (ibid., p. 8) and has further enhanced the role of national judges (ibid., p. 17).

In this context, the Charter provides a normative framework that national courts can employ to interpret domestic law in harmony with EU law. It operates simultaneously as a doctrinal mechanism, shaping interpretive methods and

legal reasoning, and as a normative benchmark for assessing the adequacy of national rights protection. Through this dual function, it actively drives the Europeanisation of judicial decision-making by promoting convergence in rights standards and fostering a shared constitutional language–and even a shared constitutional substance–across legal orders.

The Charter's field of application remains relatively limited for Member States, as it binds them only "when they are implementing Union law" (Article 51(1) of the Charter), that is, "when national legislation falls within the scope of EU law" (see CJEU, C-617/10, para. 20). In this respect, Article 51(1) of the Charter functions as "the gatekeeper" (Łazowski, 2024, p. 677).[2] Nonetheless, the Charter can—and in some contexts does—serve as an instrument of judicial Europeanisation (see, e.g. Vatovec, 2019, on the jurisprudence of the Slovenian Constitutional Court).

The use of the proposed analytical framework to examine the application of the EU Charter before national (especially constitutional) courts serves four main objectives: (1) to observe national courts' use of the Charter, identifying whether they apply, refer to, or perhaps avoid invoking its provisions; (2) to observe institutional behaviour, including changes in courts' roles, their engagement in judicial dialogue with the CJEU, and their openness to integrating the Charter; (3) to observe fundamental rights standards, assessing convergence or divergence between national constitutional rights protection and Charter-based EU standards; and (4) to observe judicial reasoning practices, evaluating the extent to which national courts adopt EU legal terminology, reasoning methods, and conceptual frameworks.

By structuring these observations, the framework enables a systematic assessment of how the EU Charter functions as an instrument of judicial Europeanisation in national courts–both theoretically and in practice.

[2] On the complexity of the matter and case law of the CJEU, see, e.g., Iglesias Sánchez, 2020.

Besides the analytical framework, which provides the structured method for assessment, and the Charter, which lies at the centre of this analysis, national courts—especially constitutional courts—are essential as the fora in which the Charter's role can be examined and its Europeanisation effects assessed. Research on judicial Europeanisation has already shown that national courts are not merely passive implementers or recipients of EU law but may also act as active participants in the European integration process (see, e.g., Cartabia, 2009; Krommendijk, 2021; Kelemen 2016; Rauchegger, 2020). The acceptance of doctrines such as the primacy and direct effect of EU law resulted not only from the authority of the CJEU but also from the strategic engagement of national judges, who increasingly invoked EU law as a resource in domestic litigation.

In this regard, constitutional courts play a particularly important role. As Claes and de Witte (2023, p. 517) argue, "their primary mandate is to uphold the Constitution, that is, to defend the values of constitutionalism *as laid down in the national Constitution*, to protect the rights of individuals *under the national Constitution* and, in the self-understanding of some of them, to protect the state and statehood itself, as well as the sovereignty, identity, and primacy of the national constitution". Their concerns relate to the protection of fundamental rights in the EU, the EU's expansive competences, and the defensive role of several constitutional courts that advocate for ultra vires review. For example, the German Federal Constitutional Court subjected its acceptance of the primacy of EU law to the *Solange II* condition, the constitutional identity condition, and the ultra vires condition (Rauchegger, 2020, p. 269) (ibid., pp. 517-522; see also Kelemen, 2016, pp. 135-137).

Rauchegger (2020, p. 259) suggests that the EU Charter's binding force has increased the visibility and practical relevance of EU fundamental rights, leading to their regular invocation before the CJEU and ordinary national courts.

From this perspective, the resulting empowerment of these courts may come at the expense of constitutional courts, whose institutional authority is closely tied to their role as "ultimate guardians and supreme interpreters of fundamental rights" (ibid.).

Constitutional courts typically engage with the Charter in three distinct ways (ibid.). Some treat it as a direct benchmark for constitutional review. Others rely on it more indirectly, drawing on the Charter interpretively to guide the understanding of national constitutional rights. A third group accords the Charter only marginal relevance, if any (ibid.). Determining which group a particular constitutional court belongs to—and whether additional nuances in the Charter use emerge beyond these three patterns—requires empirical research and careful in-depth analysis of their jurisprudence. In this context, the application of an established analytical framework proves valuable.

4. Applying the Analytical Framework: The Case of the Slovenian Constitutional Court

The analytical framework developed in the previous chapter provides a robust lens for examining the Charter's effects on the jurisprudence of national constitutional courts. In this article, it is tested against the case law of the Slovenian Constitutional Court, which serves as the highest body of the judicial power for the protection of constitutionality, legality, human rights and fundamental freedoms (Article 1(1) of the Constitutional Court Act). The analysis focuses on two cases in which EU law plays a prominent role. This, of course, does not allow for a complete or exhaustive assessment of the Charter's application in the Court's jurisprudence or of its broader Europeanisation effects. Such an endeavour would exceed the limited scope and purpose of this article and is better suited to future empirical research.

4.1. Examining Constitutional Review: Decision No. U-I-59/17

Decision No. U-I-59/17, adopted in 2019, is a particularly illustrative case of the Slovenian Constitutional Court. Acting on a request from the Ombudsman for Human Rights, the Court reviewed the constitutionality of several provisions of the Aliens Act. The challenged provisions regulated a special legal regime governing the treatment of individuals who expressed an intention to submit an application for international protection during a time of "changed circumstances" in the field of migration. Under this regime, the legislature temporarily replaced, within a defined territory, the general provisions of the International Protection Act, which ordinarily govern the handling of applications for international protection (USRS Decision U-I-59/17, para. 41).

The special arrangement authorised the Police to conduct identification procedures and establish the identity of individuals in accordance with the legislation regulating the tasks and powers of the Police. The Police were required to reject a motion to apply for international protection as inadmissible and transfer the individual to a neighbouring country, provided that the EU Member State from which the person had entered Slovenia did not exhibit systemic deficiencies in its asylum procedures or reception conditions that could expose the individual to a risk of torture or inhuman or degrading treatment (ibid., paras. 42-44).

The Constitutional Court assessed these provisions from the viewpoint of their conformity with the principle of non-refoulement, protected under Article 18 of the Slovenian Constitution, which stipulates that no one may be subjected to torture or to inhuman or degrading punishment or treatment.

Regarding the application of the EU Charter, the Constitutional Court outlined a systematic approach for determining whether national legislation falls within the scope of EU law

and, consequently, whether the Charter should be applied. The Court emphasised:

"In conformity with the first paragraph of Article 51 of the Charter, Member States shall apply the provisions of the Charter only when they are implementing EU law. The requirement that the Charter be observed is binding on Member States only when they are acting within the scope of EU law. However, not every national measure in a field falling within the competences of the EU requires the application of the Charter. When assessing whether the national regulation constitutes the implementation of EU law within the meaning of Article 51 of the Charter, the following must be assessed: (i) whether the objective of the national legislation is the implementation of EU law; (ii) the nature of the national legislation and whether, in addition to the objectives encompassed by EU law, it also pursues other objectives; and (iii) whether there exists a specific regulation of EU law in that field that may affect the assessment." (ibid., para. 23).

On this basis, the Constitutional Court concluded that the challenged provisions fall within an area of shared competence between the EU and Member States (ibid., para. 23) and thus extend to the field of EU law (ibid., para. 25). In assessing these provisions and determining the substance of human rights and fundamental freedoms, the Court followed its upper premise that it must take into account primary EU law, in particular the EU Charter, as well as the case law of the CJEU (ibid.). The Constitutional Court further held that it may apply national constitutional standards concerning fundamental rights, provided that doing so does not compromise the level of protection guaranteed by the Charter as interpreted by the CJEU, nor undermine the primacy, unity, and effectiveness of EU law (ibid.), as emphasised in the CJEU's *Melloni* judgment (CJEU, C-399/11, para. 60). This demonstrates that the Slovenian Constitutional Court's acceptance of the primacy of EU law and

its application of the Charter are not subject to conditions derived from national constitutional law.

On the basis of its constitutional case law, and taking into consideration the jurisprudence of both the European Court of Human Rights (ECtHR) and the CJEU in the field of international protection, the Constitutional Court held that the right to non-refoulement, as enshrined in Article 18 of the Constitution, cannot be limited (ibid., para. 62). Any interference with this right is therefore inadmissible (ibid.). Consequently, the Court abrogated the challenged provisions of the Aliens Act.

When examined through the lens of the analytical framework developed in the previous chapter, several findings emerge from this decision.

Doctrinal Europeanisation is clearly reflected in the Constitutional Court's references to the Charter. The Court highlighted that the Charter recognizes protection in the event of removal, expulsion, or extradition (Article 19(2) of the EU Charter). It is in conformity with this provision that no one may be removed, expelled, or extradited to a state where there is a serious risk of being subjected to the death penalty, torture, or other inhuman or degrading treatment or punishment (USRS Decision U-I-59/17, para. 28). The Court also drew attention to Article 4 of the Charter, which prohibits torture and ensures that no one may be subjected to torture or to inhuman or degrading treatment or punishment (ibid.). By referencing CJEU case law, the Constitutional Court emphasised that "the prohibition of inhuman or degrading treatment as referred to in Article 4 of the Charter corresponds to the prohibition referred to in Article 3 of the ECHR and that, within those limits, its content and scope are–in conformity with the third paragraph of Article 53 of the Charter–equal to that determined by the ECHR" (ibid., para. 29). The Court further noted that the right guaranteed by Article 4 of the Charter is absolute (ibid.). These references demonstrate a clear doctrinal in-

corporation of the Charter into national constitutional reasoning.

Equally significant is the Constitutional Court's method for determining the Charter's applicability. It adopts the three-part test under Article 51 of the Charter, assessing the objective, nature, and context of the national legislation, as well as the existence of a specific EU regulatory framework (ibid., para. 23). This reflects a direct reception of EU interpretative standards into national constitutional methodology. The decision also demonstrates sustained engagement with CJEU case law. The Constitutional Court explicitly acknowledges that when national legislation falls within the scope of EU law, it must define the content of fundamental rights with reference to both the Charter and the interpretative authority of the CJEU (ibid., para. 25). Together, these elements illustrate a pronounced doctrinal alignment between national constitutional reasoning and both the Charter and the CJEU's fundamental-rights jurisprudence.

The only limitation, however, is that the Constitutional Court did not apply the Charter as a direct standard of constitutional review. Ultimately, the constitutionality of the national legislation was assessed against the criteria of the constitutional right rather than the EU Charter itself. A similar approach is observed in the CJEU's case law. For example, when concluding that Article 47 of the Charter does not preclude the European Commission from bringing an action before a national court on behalf of the EU for damages resulting from a breach of EU competition law, the CJEU noted that the right to an effective remedy under Article 47 of the Charter provides a sufficient standard of review, given that the protection afforded by Article 6(1) of the ECHR is equivalent. As the CJEU observed: "It is necessary, therefore, to refer only to Article 47" (CJEU, C-199/11, para. 47).

Institutional Europeanisation is evident in the Constitutional Court's articulation of its constitutional obligations within the EU legal order. The Court emphasises that, pur-

suant to Article 3a(3) of the Slovenian Constitution, all state authorities—including the Constitutional Court—must apply EU law in accordance with the Union's legal framework (ibid., para. 23). Consequently, the Charter must be taken into consideration. This requirement elevates the Court's institutional responsibility to engage with the Charter as part of its constitutional mandate.

The decision further extends this institutional role by requiring the Constitutional Court to integrate the Charter when determining the content of constitutional rights (ibid., para. 25), thereby expanding its judicial function beyond a purely national constitutional perspective. At the same time, the Court recognises the structural limits imposed by the principles of primacy, unity and effectiveness of EU law, noting that national standards may be applied only insofar as they do not compromise the level of protection guaranteed by the Charter (ibid.). Taken together, these elements demonstrate that the Constitutional Court understands its role in constitutional review not in isolation, but within the multilevel governance structures of the EU, aligning its institutional practice with the Charter and the broader obligations of EU law.

Normative Europeanisation is visible in the Constitutional Court's alignment of substantive constitutional standards with those of the EU Charter. The Charter—particularly Articles 4 and 19(2) —serves as a normative benchmark for assessing the constitutionality of national legislation. The Court explicitly cites the CJEU's position that Article 4 of the Charter corresponds to Article 3 of the ECHR, with both provisions guaranteeing an equivalent level of protection, thereby endorsing European convergence in fundamental rights standards (ibid., para. 29).

The decision frequently integrates case law from both the ECtHR and the CJEU, illustrating a cross-fertilisation between the two European courts in interpreting Article 18 of the Slovenian Constitution. This approach demonstrates

that national constitutional rights are interpreted in harmony with EU values, and that the Charter actively shapes the normative content of domestic rights. In particular, the Charter constrains the Court's determination of the "substance" of national constitutional rights whenever the case falls within the scope of EU law (ibid., para. 25).

Discursive Europeanisation is evident in the Constitutional Court's adoption of EU legal language, conceptual categories and argumentative patterns. Throughout the decision, the Court repeatedly employs EU terminology such as "implementation of EU law," "scope of EU law," "mutual trust," "effective protection," "safe third country" and "common European asylum system." This vocabulary reflects not only the internalisation of EU legal framing but also of the Charter. The Constitutional Court further adopts specific interpretative formulas characteristic of CJEU jurisprudence, such as the structured test for assessing whether national legislation constitutes the implementation of EU law within the meaning of Article 51 of the Charter (ibid., para. 23). By grounding its analysis in the Charter and in the CJEU's interpretation of Articles 4 and 19(2) of the Charter, the Court aligns its constitutional rights reasoning with the EU-centred rights discourse (ibid., paras. 28-29).

Together, these elements provide a structured basis for assessing the use of the Charter within the four-dimensional analytical framework. All four dimensions—doctrinal, institutional, normative, and discursive—are identifiable in the Constitutional Court's decision, and the Charter clearly functions as a binding interpretative authority and, effectively, as a possible standard of constitutional review. However, as previously noted, the Court held that it "may apply national standards regulating the protection of fundamental rights if their application does not jeopardise the level of protection guaranteed by the Charter as interpreted by the CJEU and does not interfere with the primacy, unity, and effectiveness of EU law" (ibid., para. 25). Having determined that these

conditions were not triggered in the present case, the Constitutional Court conducted its review solely on the basis of Article 18 of the Slovenian Constitution.

4.2. Examining the Constitutional Complaint: Decision No. Up-1133/18

In Case No. Up-1133/18, the Constitutional Court considered a constitutional complaint lodged by a complainant in a commercial dispute. The complainant challenged a contractual term that allegedly prevented her from obtaining reimbursement of value added tax related to the implementation of a project financed from European Structural Funds. She argued that the case raised issues concerning the interpretation and application of EU law, that the contractual term was void under EU law, and that she was entitled to a refund of the value added tax paid (USRS, Decision Up-1133/18, para. 6). Throughout the proceedings, the complainant relied on EU law, including the case law of the CJEU, and repeatedly requested that the courts stay the proceedings and refer the case to the CJEU for a preliminary ruling under Article 267 of the TFEU (ibid.). The Supreme Court, however, denied leave to appeal on the ground that the statutory conditions for granting leave were not fulfilled, and did not address the complainant's request for a preliminary ruling (ibid.).

By dismissing the motion for leave to appeal without addressing the request for a preliminary ruling, the Supreme Court failed to provide reasoning in accordance with the requirements of the right to the equal protection of rights and the right to judicial protection, as guaranteed under Article 22 in conjunction with Article 23(1) of the Constitution (ibid., para. 35). Consequently, the Constitutional Court abrogated the challenged order due to a violation of these constitutional rights.

In this decision, too, doctrinal Europeanisation is clearly reflected in the Constitutional Court's references to the EU

Charter. The Constitutional Court referred to the Charter, highlighting that the right to a reasoned decision, enshrined in Article 47 of the Charter, is a fundamental right of EU law as well (ibid., para. 17). The Court held that the Supreme Court is obliged to state reasons why it did not submit a case to the CJEU for a preliminary ruling when denying leave to appeal, unless the parties' requests are "unreasoned, manifestly unfounded, or frivolous" (ibid., paras. 32–33; see also CJEU, C-144/23). The decision of the Constitutional Court demonstrates a deep incorporation of EU interpretative doctrine, such as the CILFIT criteria, EU-conforming interpretation, and doctrinal limits on national discretion derived from EU law. The Court engaged systematically with CJEU case law and reviewed the contested Supreme Court order in light of EU law standards, including those required by Article 267 of the TFEU and the Charter.

Institutional Europeanisation is evident in the transformation of the Supreme Court's procedural obligations arising from EU law. Even when the Supreme Court refuses leave to appeal, it must provide reasons explaining why it did not follow the applicant's request to refer the case to the CJEU for a preliminary ruling. EU law also shapes the institutional role of the Constitutional Court. In particular, the Court is precluded from reviewing certain aspects of the Supreme Court's decision under Article 23(1) of the Constitution. As a result, given the division of jurisdiction between national courts and the CJEU, the Constitutional Court cannot assess whether the case was decided by a lawful judge and is therefore unable fully to exercise its constitutionally conferred competence (USRS, Decision Up-1133/18, para. 24).

The case therefore illustrates institutional Europeanisation because EU law reshapes the competences of the Supreme Court—including the mandatory duty to provide reasons when refusing leave to appeal in EU-law-related cases—and the review functions of the Constitutional Court, as well

as the hierarchy between domestic procedural rules and EU obligations.

Normative Europeanisation is reflected in the binding force and application of the Charter. The Constitutional Court is required to consider the Charter when defining the substance of fundamental rights, and national standards may be applied only insofar as they do not compromise the level of protection guaranteed by the Charter or undermine the primacy, unity, and effectiveness of EU law. The Court's rights-based reasoning relies on EU standards—particularly Article 47 of the Charter—thereby internalising core EU constitutional principles such as primacy, direct effect, and consistent interpretation. The Constitutional Court treats Charter rights as binding for national fundamental rights review, integrates EU rights with domestic constitutional rights, and elevates EU principles to the status of internal constitutional principles.

Discursive Europeanisation is visible in the decision's extensive use of EU legal concepts, terminology, and argumentative structures, supported by frequent cross-references to CJEU jurisprudence. The judgment demonstrates a de facto internalisation of EU legal discourse, framing the case in explicitly Europeanised terms, including references to "the functioning of the EU legal order," and "the public interest in ensuring the uniform application and interpretation of EU law."

Together, these elements illustrate that Decision No. Up-1133/18 reflects the EU Charter as an instrument of judicial Europeanisation. The Constitutional Court relied on EU standards– particularly the Charter and the CJEU's case law– when assessing whether the Supreme Court had provided constitutionally adequate reasoning for refusing leave to appeal without addressing the request for a preliminary ruling. It incorporated EU-law requirement into its constitutional rights analysis, especially regarding the duty to give reasons under Article 47 of the Charter and the obligations stemming

from Article 267 TFEU. At the same time, the Court emphasised the institutional limits of its own review under Article 23(1) of the Constitution, noting that certain aspects of the Supreme Court's decision fall outside its competence. The judgment therefore illustrates how EU law informs domestic constitutional review while still operating within the constraints of the national constitutional framework.

5. Conclusion

This article has examined how the Slovenian Constitutional Court engages with the EU Charter through a four-dimensional analytical framework encompassing doctrinal, institutional, normative, and discursive Europeanisation. Drawing on two decisions—one arising from abstract constitutional review (USRS, Decision U-I-59/17) and one from the constitutional complaint procedure (USRS, Decision Up-1133/18)—the analysis demonstrates that, in these cases, the Charter operated as an instrument of judicial Europeanisation within Slovenian constitutional adjudication. Doctrinally, the Court systematically relied on CJEU case law and EU interpretative methods; institutionally, the application of the Charter reshaped procedural obligations and sharpened the distribution of competences between national courts; normatively, Charter rights functioned as binding standards guiding constitutional review; and discursively, EU legal concepts and argumentative structures were increasingly integrated into the Court's reasoning.

At the same time, the analysis shows that judicial Europeanisation unfolded within constitutionally defined limits. While the EU Charter guided and constrained national adjudication, the Constitutional Court retained the authority to apply domestic constitutional standards, provided that this application does not fall below the level of fundamental rights protection required by the Charter as interpreted by the CJEU. This balanced approach illustrates the Court's

capacity to integrate EU norms meaningfully while maintaining the Constitution as a direct standard of constitutional review. Taken together, the two decisions analysed suggest neither unconditional subordination to EU law nor constitutional resistance, but rather a cooperative and principled form of engagement.

It must be emphasised, however, that the examination of only two decisions—one from abstract review and one from the constitutional complaint procedure—does not allow for even partial, let alone comprehensive, conclusions regarding the Europeanisation of constitutional adjudication through the EU Charter. A broader set of decisions would be required to assess the Charter's actual and systematic impact on the Court's case law. Nevertheless, the findings indicate that the Charter can and does influence the Court's reasoning, and that the proposed analytical framework is capable of detecting the presence and interaction of different Europeanisation dimensions. The Charter's Europeanising effect therefore appears substantial rather than marginal, even if its overall intensity cannot yet be conclusively assessed.

Both decisions analysed illustrate the Court's ability to internalise supranational standards, reaffirming the Charter's dual function as a rights-protective instrument and a driver of judicial Europeanisation. In this respect, the Slovenian Constitutional Court appears, on the basis of the two decisions analysed, positioned among the more receptive and Charter-open constitutional courts in the EU.

Finally, further research is necessary to examine broadly the case law of the Slovenian Constitutional Court through the analytical framework proposed in this article. A comprehensive empirical study would not only enable a more accurate assessment of the Charter's overall impact, but could also refine the four dimensions and their indicators, as well as evaluate the intensity of the Charter's influence across different types of proceedings. Such research would be essential to determine whether the Charter has begun to develop

a "life of its own" in Slovenian jurisprudence—potentially shaping adjudication even beyond the scope of Article 51 of the Charter—or whether it remains underutilised due to the Court's continued reliance on domestic constitutional rights. Understanding this dynamic is crucial not only for assessing the Charter's domestic significance, but also for evaluating its long-term role within the multi-layered European system of fundamental rights protection.

As argued elsewhere, judicial Europeanisation is best understood as a multilevel, pluralistic, and dialogical process in which constitutional courts are not passive recipients of EU law but active, critical participants shaping its application and evolution (Vatovec, 2019). Yet effective cooperation within this pluralistic judicial environment requires more than formal acceptance of EU norms: it depends on genuine cross-fertilisation of standards, meaningful preliminary-reference dialogue, sustained cross-citation practices, and internalisation rather than resistance. Only through such reciprocal engagement can the EU Charter function as an effective instrument of judicial Europeanisation across the European judicial space.

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