

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DRAFT CHARTER
ON HUMAN AND MINORITY RIGHTS
AND CIVIL LIBERTIES
OF SERBIA AND MONTENEGRO**

Whereas human rights and civil liberties are the foundation of every democratic society;

Considering that particular rights of national minorities are of exceptional importance for building of a free democratic society and building of confidence between neighbors and stability in the region;

Serbia and Montenegro as part of the European family committed to democracy, peace, tolerance, respect of human rights, rule of law and social justice pass this **Charter on Human and Minority Rights and Civil Liberties**:

I GENERAL PROVISIONS

Human Dignity and Free Development of Individuals

Article 1

Human dignity is inviolable. Serbia and Montenegro have the obligation to protect it.

Everyone has the right to free development of his/her personality provided that he/she does not violate the rights of others.

Respect of Human Rights

Article 2

Everyone shall have the obligation to respect the human rights of others.

Human rights guaranteed by this Charter shall be enjoyed directly in accordance with the Constitutional Charter.

Alternative for paragraph 2:

"Human rights guaranteed by this Charter shall be directly governed, ensured and protected by the constitutions, laws and policies of the Member States."

Prohibition of Discrimination

Article 3

All are equal before the law.

Everyone shall have the right to equal legal protection, without discrimination.

Any direct or indirect discrimination based on any grounds, particularly on race, colour, sex, national origin, social origin, birth or other status, religion, political or other opinion, property status, culture, language, age or mental or physical handicap, is prohibited.

Temporary introduction of special measures required for realisation of equality, necessary protection and progress of persons or groups of persons who are in an unequal position shall be allowed for the purpose of enabling them full enjoyment of human rights under equal terms.

The special measures referred to in paragraph 4 of this Article may be applied only until the objectives pursued have been achieved.

Prohibition of Unconstitutional Abrogation or Restriction of Human Rights

Article 4

No provision of this Charter may be interpreted in such a way as to presume the right of the State Union, Member States, a group or individual to undertake actions directed at abrogation of the rights enshrined in the Charter or their restriction exceeding the statutory degree provided by the Constitutional Charter, the present Charter and by the Constitutions of Member States.

Restriction of Human Rights

Article 5

Guaranteed human rights may be restricted only on the basis of restrictions provided in the Constitutional Charter, the present Charter and the Constitutions of Member States, by law of general application which contains a specific reference to the provision allowing restriction.

Guaranteed human rights may be restricted only to the extent necessary to attain, in an open and free democratic society, the goal pursued for which restriction is allowed.

Restrictions may not be introduced for purposes other than those for which they were prescribed.

When restricting human rights and interpreting these restrictions, all state bodies, particularly the courts, shall take into account the substance of the right under restriction, the pertinence of restriction, nature and extent of restriction, the relationship between restriction and goal pursued, and whether possibility exists to achieve the goal with less restrictive means.

Restriction may under no circumstances affect the substance of the guaranteed rights.

Derogation from Human Rights

Article 6

Derogation from human rights guaranteed by this Charter shall be allowed following proclaiming of state of war or state of emergency, if the life of the State Union or Member State is threatened, only to the extent essential under the given circumstances.

Derogation measures may not entail discrimination based on race, colour, sex, language, religion, national or social origin.

Derogation from human rights that are within the jurisdiction of the institutions of the State Union may only be introduced through general legal acts passed by the Assembly of the State Union or the Council of Ministers if the Assembly cannot convene. A decision on derogation from human rights in case of state of war shall be passed upon the agreement of the competent bodies of the Member States.

Derogation from human rights in areas within the jurisdiction of the Member States shall be governed by the constitutions and laws of the Member States, and in accordance with the present Charter.

Derogation measures passed by the Assembly or the Council of Ministers shall remain in force 90 days and, following expiration, may be extended for further 90-day periods.

The Council of Ministers is required to submit the acts prescribing derogation from human rights to the Assembly for approval as soon as the Assembly can convene, otherwise restrictions shall cease to have effect following the conclusion of the first session of the Assembly held following introducing of state of war.

Derogation from human rights shall cease to have effect following ending of state of war or state of emergency.

During state of war, the Court of the State Union shall continue its work. The status and powers of the Court and its judges shall remain unchanged.

No derogation shall be permitted under any circumstances from the following rights guaranteed by this Charter:

- - "the right to life";
- - "inalienable human dignity";
- - "inviolability of physical and mental integrity";
- - "prohibition of slavery and servitude";
- - "prohibition of imprisonment for debt"
- - "right to a fair trial";
- - "presumption of innocence";
- - "prohibition of retroactivity, no punishment without law";
- - "Ne bis in idem";
- - "freedom of thought, conscience and religion";
- - "right to marry";
- - "citizenship".

Human Rights Guaranteed by International Treaties

Article 7

Human rights guaranteed by generally accepted rules of international law, as well as by international treaties in force in the State Union, shall be guaranteed by this Charter and directly exercised.

*Prohibition of Restriction of Human Rights
on the Pretext that they are not Guaranteed by the Charter*

Article 8

There shall be no restriction upon human rights guaranteed by generally accepted rules of international law, international treaties in effect in the State Union and laws and other legislation in force, on the pretext that they are not guaranteed by this Charter or are guaranteed to a lesser extent.

*Judicial Protection and Elimination of Consequences
of Human Rights Violations*

Article 9

Everyone has the right to effective judicial protection if the human right guaranteed by this Charter is violated or denied, and the right to have the consequences of such human rights violation eliminated.

Everyone claiming that his/hers rights guaranteed by the Charter are violated or denied by an act or undertaking of government authority and/or other bodies exercising public authority shall be entitled to file a complaint with the Court of Serbia and Montenegro upon exhausting regular legal remedies.

Alternative : paragraph 2 to be deleted.

Interpretation of Human Rights Provisions

Article 10

Human rights guaranteed by this Charter shall be interpreted so as to promote the values of an open and free democratic society and in accordance with international human rights guarantees in force, particularly the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms and European Social Convention taking into account precedents of international bodies supervising their implementation.

II Human Rights

The Right to Life

Article 11

Human life is inviolable. In the State Union of Serbia and Montenegro there shall be no death penalty.

Inviolability of Physical and Mental Integrity

Article 12

Everyone shall have the right to inviolability of physical and mental integrity, including the right to dispose freely with his/her body and to freely decide on giving birth or not.

No one shall be subjected to torture, inhuman or degrading treatment or punishment.

No one shall be subjected to medical and scientific experiment without his/her free consent.

Prohibition of Slavery, Servitude and Forced Labour

Article 13

No one shall be kept in slavery or servitude. Any form of human trafficking is prohibited.

Forced labour is prohibited. Work or service imposed on persons effectively sentenced, persons on military service or in case of emergency threatening the life of the community shall not be considered forced labour.

Right to Liberty and Security

Article 14

Everyone has the right to personal liberty and security.

No one shall be arbitrarily deprived of liberty. Depriving of liberty shall be allowed only in cases and in the manner set out in the law of the State Union or in laws of Member States.

No one shall be deprived of liberty solely because on the grounds of failing to meet a contractual obligation.

Everyone deprived of liberty shall be informed promptly, in a language he/she understands, of the reasons of his arrest or charges against him/her, as well as of his/her other rights.

Everyone deprived of liberty shall be entitled to promptly inform his/her closest relatives of such fact.

Everyone deprived of liberty shall be entitled to initiate proceedings where the court shall promptly review the lawfulness of arrest and order release if the arrest was unlawful.

A person in detention shall be treated humanely and with respect for his/her dignity. Any violence directed against a person deprived of liberty or extorting of statements are particularly prohibited.

Anyone unlawfully deprived of freedom shall have an enforceable right to compensation.

Additional Guarantees in Case of Depriving of Liberty for Criminal Offence or Misdemeanour

Article 15

A person under arrest shall be immediately informed of his/her right to remain silent and the right to have an attorney of his/her choice present during questioning.

A person under arrest shall be promptly, and not later than 48 hours, brought before the competent court. Otherwise, such person shall be released.

A person reasonably suspected of committing a criminal offence may be detained only by decision of the competent court, if this is necessary for conducting of criminal proceedings.

Detention shall be limited to the shortest period necessary.

Detention shall under no circumstances exceed six months. If no indictment is issued within this period, the accused shall be released.

Special Guarantees

Article 16

Everyone shall have the right to be informed promptly and in detail in a language which he understands of the nature and cause of charges against him and to be tried without undue delay.

Everyone shall have a right to an effective defence, including the right to defence counsel of his choice before a court or other body competent to hold proceedings, to communicate with counsel without hindrance and to have adequate time and facilities for preparation of his defence.

Cases where interests of justice require that the defendant be assigned defence counsel if he does not have sufficient means to pay for it shall be specified by law.

The defendant shall have the right to assistance of an interpreter if he cannot understand or speak the language used in court.

Everyone who is available to a court or other body competent to hold a trial shall not be punished if precluded from giving testimony or defending himself.

No one shall be compelled to testify against himself or to confess guilt.

Right to a Fair Trial

Article 17

Everyone shall be guaranteed equal protection of rights in court proceedings, before other state authorities and entities exercising administrative authority.

Everyone shall be entitled to have his rights and obligations and any charges against him determined promptly by an independent and impartial court established by law.

Rendering of judgement shall be public and trials are public, unless otherwise provided by law.

Right to Legal Remedy

Article 18

Everyone shall have the right to an appeal or other legal remedy against a decision on his/her rights, obligations or lawful interest.

Presumption of Innocence

Article 19

Everyone shall be innocent until his/her guilt for a criminal offence is established by a final court decision.

Ban on Retroactivity, Punishment only According to Law

Article 20

No one may be presumed guilty or sentenced for an act that did not constitute a penal offence under the law at the time it was committed.

Penalties shall be imposed according to law applicable at the time the offence was committed unless subsequent law is more beneficial for the offender.

Ne bis in idem

Article 21

No one may be tried twice for the same penal offence.

*The Right to Rehabilitation and Compensation for Miscarriage
of Justice in Criminal Proceedings*

Article 22

A person convicted of a penal offence without grounds shall have the right to rehabilitation and compensation by the state.

Right to property

Article 23

The right of ownership and the right to inherit is guaranteed.

No one may be deprived of property nor may it be restricted, unless in public interest determined by law, and with compensation that may not be below market value.

The competent court shall decide in litigation regarding the amount of compensation.

Right to Privacy and Family Life

Article 24

Everyone has the right to respect for his/her privacy and family life, home and confidentiality of correspondence.

No one may enter another's home or premises against the will of the owner and conduct a search therein, unless by an order of the court. Entry into another's home or premises or search thereof without a court order is permitted only when necessary for immediate arrest of perpetrator of a criminal offence or to prevent imminent and grave danger against person and property, and in a manner prescribed by law.

Confidentiality of correspondence and other means of communication is inviolable. Derogation is permissible only for specific duration under court order if essential for conducting of criminal proceedings or national defence.

Protection of personal information is guaranteed. Collection, recording and use thereof is regulated by law. Any use of personal data other than for the goal pursued is prohibited and punishable. Everyone shall have the right to be informed of information collected on his person, in accordance with law.

The Right to Marriage

Article 25

The right to marriage shall be guaranteed, based on the freely given consent of the future spouses. The contraction, duration and dissolution of a marriage shall be based on the equality of the spouses.

Children born out of wedlock shall have the same rights as children born in a marriage.

Freedom of Thought, Conscience and Religion

Article 26

Everyone has the right to freedom of thought, conscience, belief or religion, including freedom to stand by his/her belief or religion or to change them.

No one shall be obliged to declare his/her religious and other beliefs.

Everyone has freedom, either alone or in community with others and in public or in private, to manifest his/her religion or belief in worship, observance, practice and teaching.

Parents or guardians have the right to ensure religious and moral education of their children in conformity with their own beliefs.

Religious Communities

Article 27

All religious communities are equal and separate from the state.

Religious communities shall have freedom to determine their internal organisation, affairs and religious practice.

Religious communities have the right to found religious schools and charities.

Conscientious Objection

Article 28

Conscientious objection shall be recognised in the State Union of Serbia and Montenegro.

No one shall be obliged to fulfill military or other duty that requires the use of weapons, against his/her religion or belief. Such person may be requested to perform a corresponding civil service in accordance with the law.

Freedom of Thought and Expression

Article 29

Everyone has the right to freedom of thought and expression. This right includes freedom to request, receive and impart information and ideas verbally, in writing, by use of visual images or any other means.

Everyone has the right of access to data in the possession of state bodies in accordance with the law.

The right to freedom of expression may be restricted by law if it is necessary for the protection of rights and reputation of others, protection of the authority and impartiality of the judiciary, national security, public health and morals or public safety.

Freedom of the Media

Article 30

Everyone may establish papers and other public media, without obtaining permission to do so, by entry into the register of the competent body. Television and radio stations shall be established in accordance with the laws of Member States.

There shall be no censorship in the State Union of Serbia and Montenegro.

No one may prevent the distribution of the press or information and ideas by other means of public information, unless it is established by a court order that it is necessary to do so for the purpose of preventing war propaganda, incitement to imminent violence, or advocacy of racial, national or religious hatred that constitutes incitement to discrimination, hostility or violence.

Freedom of Assembly

Article 31

Freedom of peaceful assembly, without arms, shall be guaranteed.

Prior permission or application for assembly in closed spaces shall not be necessary.

In case of rallies or demonstrations held in the open, the obligation of prior notification of the competent body about the assembly may be prescribed by the laws of Member States.

Freedom of assembly may be restricted by the laws of Member States if it is necessary for the protection of public safety, public health and morals, national security or protection of the rights of others.

Freedom of Association

Article 32

Everyone has the right to freedom of association, including the right not to be a member of an organisation.

Political, trade union and other organisations may be established without prior permission, by entry into the register of the competent body.

The right to freedom of association may be restricted by the laws of Member States if it is necessary for the protection of public safety, public health and morals, national security or protection of the rights of others.

Organisations whose activities are aimed at violent overthrow of the constitutional order, violation of guaranteed human rights or incitement to racial, national or religious hatred may be prohibited.

The Right to Free Elections

Article 33

The citizens of the State Union of Serbia and Montenegro shall have the right to take part in the conduct of public affairs, either directly or through representatives freely chosen by secret ballot in general and periodic elections.

A citizen of the State Union of Serbia and Montenegro who has turned 18 has the right to vote and be elected to state bodies. The electoral right is universal and equal for all, and voting is carried out by a secret ballot.

The Right to Petition

Article 34

Everyone has the right to address state bodies, individually or together with other persons, to submit petitions and other proposals to them, and to get answers from them if he/she demands it. No one may suffer harmful consequences for exercising this right.

Citizenship

Article 35

A citizen of a Member State may not be deprived of his/her citizenship, expelled from the State Union of Serbia and Montenegro or extradited to another country except in accordance with international law.

Majority

Article 36

A citizen of the State Union of Serbia and Montenegro attains majority when he/she turns 18.

The Right to Freedom of Movement

Article 37

Everyone has the right to freedom of movement and residence on the entire territory of the State Union of Serbia and Montenegro as well as the right to leave its territory.

Freedom of movement and residence and the right to leave the territory of the State Union may be restricted by law if it is necessary for the purpose of conducting criminal proceedings, protection of public peace and order, prevention of spreading of communicable diseases or for the sake of national defence.

The entry and stay of foreign nationals in the country shall be regulated by law. A foreign national may be expelled from the country only following the decision of the competent body and a procedure established by law. The expelled person shall not be sent to a place where he/she may face persecution on grounds of race, religion, citizenship, association with a social group or political opinion.

The Right to Asylum in the State Union of Serbia and Montenegro

Article 38

Anyone persecuted on grounds of race, colour, sex, language, religion, national origin or political opinion shall have the right to asylum in the State Union. The procedure for granting asylum shall be determined by law.

Special Protection of the Family, Mother and Child

Article 39

The family, mother and child shall enjoy special protection by the society and state.

The right of a mother to protection by the state during a period preceding and following childbirth determined by law shall be guaranteed.

The Right to Work

Article 40

The right to work shall be guaranteed in accordance with the law. The state shall aim to create conditions in which everyone can earn a living from his/her own work.

Everyone has the right to free choice of work.

Everyone has the right to fair and adequate working conditions, and especially to fair remuneration for his/her work.

The Right to Strike

Article 41

Employees shall have the right to strike, in accordance with the law.

Social Security

Article 42

Everyone residing in the State Union of Serbia and Montenegro shall have the right to social security and insurance.

The Right to Education

Article 43

Everyone has the right to education.

Everyone has the right to found schools and universities in accordance with the law.

Primary education shall be compulsory. The state shall provide free primary education.

The Right to Health Care

Article 44

Everyone has the right to health care.

Member States shall ensure health care for children, pregnant women and old persons if they are not entitled to this right on another basis.

Freedom of Scientific and Artistic Creation

Article 45

Everyone has the right to scientific and artistic creation.

Authors of scientific and artistic works shall be guaranteed moral and material rights in accordance with the law.

Healthy Environment

Article 46

Everyone, and in particular the State Union and Member States, shall be responsible for environmental protection.

Chapter III - Special Rights of the Members of National Minorities and Obligations of the State Union of Serbia and Montenegro

Note: Concerning the term of national minorities used in the title and provisions of this Chapter, the Subcommittee decided that the Commission should choose between this and another term.

The Basis and Framework of Special Rights

Article 47

The protection of the rights of members of national minorities shall be in accordance with the international protection of human and civil rights, and in particular Universal Declaration on the Rights of Man, International Convention on the Elimination of All Forms of Racial Discrimination, and Framework Convention on the Protection of National Minorities.

Members of national minorities shall have special individual and collective rights to be exercised individually or in community with others.

Collective rights shall include participation of the members of national minorities directly or through elected representatives in solving the problems of particular importance in the field of culture, education, information and the use of language and script in accordance with the law.

In order to exercise the right to local self-government in the field of culture, education, information and official use of language and script, national minorities may elect their national councils, in accordance with the law.

The terms "minority population", "national communities" and "ethnic communities" may be used in addition to the term "national minority".

Freedom of Expression of National Identity

Article 48

Freedom of expression of national affiliation shall be guaranteed.

No one shall be compelled to reveal his/her national affiliation.

Prohibition of Discrimination

Article 49

Members of national minorities shall be guaranteed equality before the law and equal legal protection.

Any discrimination on grounds of affiliation with a national minority shall be prohibited.

The regulations, measures and actions aimed at granting constitutional rights to unequal national minorities in order to ensure their full and equal exercise of human rights shall not constitute discrimination.

Prohibition of Forced Assimilation

Article 50

Assimilation of members of national minorities against their will shall be prohibited.

The State Union of Serbia and Montenegro shall protect members of national minorities against any action aimed at such assimilation.

*Prohibition of Instigation to Racial,
National and Ethnic Hatred*

Article 51

Any advocacy and promotion of national, racial, religious or other inequality, as well as any incitement to and instigation of national, racial, religious and other hatred shall be unconstitutional and punishable.

Identity Rights

Article 52

Members of national minorities shall have the right to:

- - express, uphold, cherish, promote and manifest in public their national and ethnic, cultural and religious characteristics,
- - display their symbols in public places in accordance with the law,
- - use their own language and script in private and in public and officially, in accordance with the law,
- - education in their own language at state institutions,
- - establish private educational institutions at all levels,
- - use their personal name in its original form,
- - in communities where they make significant minority population, to have traditional local names, names of streets and places and topographic names written in the language of the minority,
- - full and impartial information in their own language, including the right to express, receive, impart and exchange information and ideas,
- - found their own public media in accordance with the law.

The manner of exercising these rights shall be precisely determined by law.

The Right to Association

Article 53

Members of national minorities shall have the right to establish educational and cultural organisations and associations, which are financed on a voluntary basis.

The special role of minority organisations and associations in the exercise of rights of members of national minorities shall be recognised.

Relations with Co-nationals in Other States

Article 54

Members of national minorities have the right to maintain without interference relations with members of the same nation in other states.

Improvement of Conditions of Living

Article 55

The State Union of Serbia and Montenegro shall have the duty, wherever necessary, to adopt adequate measures to promote the full and effective equality of persons belonging to national minorities as well as those belonging to the majority in all spheres of economic, social, political and cultural life.

In this regard, whenever necessary, measures shall be taken to eliminate manifestly disadvantageous conditions of living of the members of national minorities.

The State Union of Serbia and Montenegro shall guarantee members of national minorities the right to take part in conducting public affairs under equal conditions with other citizens, including the right to vote and stand for office.

Promotion of Spirit of Tolerance

Article 56

In the spheres of education, culture and media, The State Union of Serbia and Montenegro shall encourage the spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect, understanding and co-operation of all persons living on its territory regardless of their ethnic, cultural, linguistic or religious identity.

Judicial Protection of Rights of Members of National Minorities

Article 57

Members of national minorities shall enjoy effective judicial protection of their rights.

Guarantees for Acquired Rights

Article 58

The achieved level of human and national minorities' rights, both individual and collective, must not deteriorate.

This Charter shall not revoke or change the rights of national minorities acquired through regulations that were in force before this Charter came into effect, as well as rights acquired on the basis of international treaties ratified by the FR Yugoslavia.