

## **Charting the Charter**

### ***Equality bodies and fundamental rights in the EU***

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Last December, on the occasion of the fifth anniversary of the EU Charter of Fundamental Rights, the European Commission organised a high-level conference to raise awareness about the Charter and discuss training needs of practitioners.

About 200 stakeholders from different areas such as judiciary, public administration, local and regional authorities, academia but also from equality bodies and national human rights institutions concluded that there is a need for further cooperation, support and exchange of best practices among all actors in this field.

The role of equality bodies and NHRIs as key actors also emerged clearly from that conference. I am therefore a strong supporter of this Equinet initiative and note with pleasure that it includes hands-on workshops which should enable the participants to interact and see different perspectives, both at the EU and national level, as well as tools and other ways to use the Charter.

[The EU Charter]

The EU Charter is still in its early stages. However, over 5 years only, the Charter has grown to become a very powerful tool.

With the Lisbon Treaty, the Charter has become legally binding for the EU Institutions, bodies and agencies in all their actions and for Member

States when they implement EU law. To demonstrate the potential of the Charter in the EU legislative process, let me first focus on the EU institutions, and in particular on the Charter related work of the European Commission.

[EU Institutions]

In order for the rights in the Charter to be effective, the entry into force of the Charter had to be flanked by a robust implementation plan.

This is why the Commission adopted in October 2010 a *Strategy for the effective implementation of the Charter*. The strategy calls for the strengthening of the culture of fundamental rights in all EU institutions.

To ensure that all Commission proposals and actions are Charter compliant, the Commission adopted in 2011 an *Operational Guidance on taking into account fundamental rights in impact assessments* that provides detailed explanations on the method that should be followed when assessing impacts on fundamental rights in impact assessments. During the Impact Assessment phase, we need to ensure that the impacts on fundamental rights are comprehensively assessed.

On the basis of a "fundamental rights check list", the Commission's services identify fundamental rights issues in the foreseen policy options and if a policy option is retained that restricts one or several fundamental rights, the checklist requires that the legality, necessity and proportionality of this limitation is carefully assessed and described in the impact assessment report.

Recently, the Commission adopted its Better Regulation Package, which clearly reiterates the importance of the fundamental rights screening.

This is also accompanied by targeted training sessions for all Commission departments.

All these efforts would be in vain if the screening of EU pending legislation would not be done throughout the legislative process, namely when a Commission's proposal is on the table of the Council and the European Parliament.

The draft inter-institutional agreement proposed by the COM in the context of the Better Regulation package aims at introducing an assessment of all the impact of major legislative amendments. This will in turn have a positive impact in assessing the fundamental rights implications when adopting new legislation.

The need for thorough fundamental rights checks of draft legislation was also confirmed by the European Court of Justice. In its Digital Rights Ireland case of last year the Court ruled the Data Retention Directive invalid for infringements of the Charter of fundamental rights (Article 7 and 8). It ruled that data retention serves a legitimate objective of general interest, namely the fight against serious organised crime, and is an appropriate means for attaining this objective. However, it held that the interference by the Directive with the fundamental rights to respect for private life and to the protection of personal data was not limited to what is strictly necessary.

This judgment is important for all EU institutions. For example in December 2014, the Council updated its 'Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council preparatory bodies' and it provided training to Council staff to make these guidelines more operational.

Since 2010, the Commission adopts every year a Report on the effective application of the EU Charter of Fundamental rights which monitors progress and challenging areas where the EU has powers to act, showing how the Charter has been taken into account in actual cases, including main developments of jurisprudence.

[EU and National courts]

The Courts are the main actors in our context. The number of decisions of EU Courts quoting the Charter in their reasoning has increased steadily: from 43 in 2011, to 114 in 2013 and to 210 in 2014. This contributes to build a coherent system for the protection of fundamental rights, which guarantees equal levels of protection in all Member States, whenever EU law is being implemented.

National judges also play a key role in upholding fundamental rights and the rule of law. National judges regularly use the preliminary rulings procedures. It helps the development of Charter-related case law and strengthens the role of national judges in upholding it. In 2014, national judges *made 43 such referrals for a preliminary ruling*, slightly more than in previous years.

The Charter has implications for very diverse areas, ranging from immigration and asylum, financial markets, labour law, consumer protection, environment law, children's custody and also for equality.

To take one very recent example, I would refer to the case Leger<sup>1</sup>.

Going back to 2013, an interesting case which shows the concrete effects of the Charter was the Blanka Soukupová case, where the Court

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<sup>1</sup> [CJEU, C-528/13, Leger, 29.4.2015](#)

held that in implementing Council Regulation 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund Member States are required to respect the principles of equal treatment and non-discrimination, enshrined in Articles 20, 21(1) and 23 of the Charter.

When providing early retirement support for elderly farmers (as requested in the implementing regulation), Member States are required, because of the Charter applicability, to ensure equal treatment between women and men, and to prohibit any discrimination on grounds of gender.

*My first message is in conclusion that the Charter application has potentially a very concrete and far reaching effect on the respect of fundamental rights in the EU, including the right to non discrimination.*

[Member States when implementing EU law, role of equality bodies]

*My second message is that we will only give life to the Charter of Fundamental Rights once we will realise that it requires a concerted effort at all levels and by the different actors involved.*

Firstly, national administrations have to ensure respect for fundamental rights when implementing EU law.

Secondly, the effectiveness and work of specialised institutions, such as equality bodies or national Human Rights Institutions is important to help citizens to better enforce their fundamental rights.

Equality bodies play a fundamental role in the non-discrimination architecture of the EU, namely in implementing and enforcing existing

EU equality legislation. It is quite understandable that your main activities are linked primarily to the protection of the equality principle.

Yet human rights are indivisible and interdependent. Fundamental rights generally and the EU Charter specifically should be embedded within the work of all entities, including equality bodies, that provide and support access to justice. Depending on respective mandates and tasks, equality bodies may invoke the Charter in their activities such as: training, awareness raising, processing complaints, advising government, litigating cases before the courts or data collection.

Equality bodies are mandated to promote and protect human rights and they fulfil a crucial role of monitoring and reporting human rights abuses. With the increasing importance of the EU Charter of Fundamental Rights, equality bodies are partners in helping to realise access for citizens to their "Charter rights".

The 2013 Commission survey about the national level use of the Charter by bodies with human rights remit, which also covered equality bodies, demonstrated that some equality bodies are already referring to the Charter in their litigation or in their advisory work vis-à-vis governments and that many organise training and awareness raising activities.

[Infringements]

At the level of the EU, the Commission, as Guardian of the Treaties, is committed to monitor and take measures to enforce EU law, including through infringement proceedings, where needed and as a last resort. This includes the respect of the Charter by Member States when implementing EU law. Independent and impartial data collection and

reporting by equality bodies are very important elements in this regard. In 2014, 11 infringement cases directly concerned the Charter.

Recent examples of infringements in the area of non-discrimination include two infringement proceedings against Member States for discrimination of Roma children in education, in violation of the Racial Equality Directive. In discussions with the Commission, one Member State justified its actions by reference to CJEU case law related to the Charter. Consequently, the Commission deemed it necessary to clarify the interpretation of this case law in the letter of formal notice, specifically referring to Article 21 of the Charter, which prohibits discrimination based on race and ethnic origin.

In order to prevent the need for infringement procedures from arising, awareness raising and targeted fundamental rights trainings to practitioners are vital to assist Member States to enforce fundamental rights effectively. Our current funding programmes, namely Rights, Equality and Citizenship, as well as the Justice Programme, provide some degree of incentive and support in this direction. The exchange of best practices is another tool.

[Awareness raising]

In terms of general perceptions and awareness, we cannot overlook that the majority of our citizens is not well aware of the "EU dimension" in the field of fundamental rights, let alone about the existence of the Charter and the remedies at their disposal.

Our latest Eurobarometer survey, published last month, showed that only *some 51% respondents had* heard of the Charter. Results on the knowledge of the scope and applicability of the Charter are clearly even

worse, with only 14% of respondents actually knowing well what the Charter is about.

In the past years, several training projects as well as awareness raising actions on the Charter have been co-funded by the Commission, some of them - for example the Rainbow Has project or An Evening with Ombudsman - involved also equality bodies.

In this regard, it is very important to support actions aiming at helping citizens to know where to turn to get redress about the violation of their rights. The Fundamental Rights Agency project CLARITY, which will be presented to you tomorrow, is very promising in this regard. In addition, a very interesting project "CharterClick" by the University of Florence is currently underway aiming at establishing an easy internet tool to advise where to turn in cases of breach of fundamental rights, which also includes close cooperation with equality bodies.

However, it is clear that there is still a lot to do and it should be done closer to the citizens to ensure that people do not knock on the wrong door and they find the help they need. Equality bodies obviously play a crucial role in this regard.

[Looking forward]

In order to turn fundamental rights into reality we therefore need to complement our actions. We also need to join forces to address challenges effectively and take a human rights based approach to policies.

If I turn to a very pressing priority both at EU and national levels, the prevention and combat against intolerance, racism and xenophobia, can



only be effective if addressed comprehensively, from awareness, education, inter-cultural dialogue, non-discrimination policies to the criminal law response.

We have the knowledge and basic tools to assist and support Member States in this task, through project funding, experts' meetings or exchange of best practices.

We observe that in these areas a real difference can only be made once the police and the courts will have developed a reflex to incorporate the bias motivation in the proceedings.

Also, underreporting by the victims is a key problem. It entails gaining the trust of the victims and cooperation among public authorities, equality bodies and civil society is essential in this respect.

Antisemitic and anti-Muslim hatred will be the main topic of this years' Annual Colloquium on Fundamental Rights, organised under the patronage of FVP Timmermans and Commissioner Jourova on 1 and 2 October, which will bring together a selected number of high level participants from across the EU.

The contributions by several equality bodies and by EQUINET to our recent public consultation, serving to inform the high level discussions during the Colloquium, have brought interesting ideas and data.

To conclude, I see a clear contribution of equality bodies in many aspects of implementation of the EU Charter and in terms of ensuring effective respect, protection and promotion of fundamental rights.