



ASSISES DE LA JUSTICE

DISCUSSION PAPER 5: FUNDAMENTAL RIGHTS

This discussion paper was produced as input to discussions leading up to and during the Assises de la Justice conference (Brussels, 21-22 November 2013). It will also contribute to the preparation of the Commission's Communication on future initiatives in the field of Justice. The content of this paper does not reflect the official opinions of the European Commission or other institutions of the European Union.

I. Introduction:

When reflecting on the future of the EU justice policy, the Charter of Fundamental Rights of the European Union ('Charter') must serve as a compass. Any initiative in this area must be firmly rooted in the commitment of the EU to fully respect and promote fundamental rights. As a background for the discussion during the *Assises de la justice*, this paper sets out the overall approach taken to ensure the effectiveness of all the rights enshrined in the Charter and the challenges in that respect¹.

It is important to recall that the Charter complements national systems for the protection of fundamental rights, but it does not replace them. The Charter addresses, first and foremost, the EU institutions and their actions. Member States who are subject to their own constitutional systems and to fundamental rights anchored therein, only have to respect the Charter when national measures come within the scope of EU law: Article 51 of the Charter stipulates: "*The provisions of the Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard to the principle of subsidiarity and to the Member States only when they are implementing Union law*". For example, national legislation transposing a Directive, or national authorities, including courts applying EU law, must comply with the Charter.

II. What has been achieved?

The Charter gained legal force as primary EU law through its incorporation into the Lisbon Treaty in 2009. As a result, EU institutions in all their actions, and Member States when implementing EU law, are legally required to ensure respect for fundamental rights.

In concrete terms, this means that since 2010 all Commission proposals and legal acts are not only systematically vetted for their economic, social and environmental effects, but they also undergo a detailed

¹ This paper does not address the specific policies developed for certain Charter rights, such as those relating to the protection of personal data, the principle of non-discrimination, the rights of the child, the right to vote and to stand as a candidate at EP and municipal elections, or freedom of movement and of residence.

assessment regarding their possible impact on fundamental rights. This ‘Charter Strategy’², which entails systematically applying the Charter in practice when preparing and adopting EU law, has triggered a new momentum in the European Parliament and the Council: these institutions have also committed to systematically assessing impacts on fundamental rights when adopting new legislation.

A significant development has been the increasing judicial application of the Charter. The Court of Justice of the European Union has already found on two occasions that certain provisions of EU legislation did not comply with the Charter. National courts for their part are increasingly referring to the Charter and making requests for preliminary rulings to the Court of Justice of the European Union on the interpretation of the Charter (The Court of Justice of the European Union referred to the Charter in more than 100 cases).

Citizens are now more informed about fundamental rights and on where to turn to obtain redress when they consider their rights violated. The new Fundamental Rights pages of the European e-Justice Portal provide information on national courts and on bodies handling complaints on infringements of fundamental rights (national Ombudspersons, National Human Rights Institutions and Equality Bodies). The Annual Report on the application of the Charter provides information about the Charter rights and their implementation by the EU and the Member States. The European Year of Citizens 2013 has proven to be an important opportunity to widely inform the public about citizens’ rights and to listen to citizens’ concerns.

Five years after its establishment, the EU Agency for Fundamental Rights (FRA) has become a recognised source of objective, reliable and comparable data on the situation of fundamental rights in the EU. EU institutions rely on this information when developing new policies and legislation with an impact on fundamental rights.

III. The challenges ahead for the EU fundamental rights policy

The effectiveness of fundamental rights is indispensable for establishing a genuine European area of justice. It is vital not only for people living in the EU but also for the development of the EU itself. Respect for fundamental rights within the EU will help to build mutual trust between Member States and, more generally, public confidence in the EU’s policies.

1) The impact of the accession of the EU to the European Convention on Human Rights

The accession of the EU to the European Convention on Human Rights - an obligation deriving from Article 6 the Treaty on European Union - will enable individuals to seise the European Court of Human Rights against an act of the EU (which is currently not possible). It will also make the Union part of the Council of Europe’s system that supervises compliance with the ECHR across 47 countries in Europe. The Commission has always considered the EU’s accession to the European Convention on Human Rights as a priority. Significant progress has been achieved. It is now important to maintain the momentum in order to bring as soon as possible the process of accession to its conclusion.

2) Reinforcing compliance with the Charter

Developing the European area of justice requires that all EU institutions commit to a common approach to guarantee the respect of fundamental rights throughout the legislative process. However, there still is progress to be made to ensure that the impact on fundamental rights is fully considered during negotiations where final compromises are elaborated.

It is necessary to draw from the experience of the first years of application of the Charter Strategy and update this strategy where necessary. A renewed inter-institutional commitment could be envisaged in order to ensure consistent application of fundamental rights.

² Commission Communication COM(2010)573 “ Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union”.

3) Involving stakeholders at national level

Upholding fundamental rights by Member States when they implement EU law in justice areas is in the common interest of all Member States and is essential to maintain mutual trust. Stakeholders at national level can contribute to a better understanding of how EU rules in justice areas are applied in practice and where the needs are for further initiatives in this area.

Contributions of stakeholders at national level could usefully feed the Annual Charter Reports. Through these reports, the Commission meets the longstanding and legitimate expectations of placing fundamental rights at the heart of EU policies, which have been voiced in particular by the European Parliament³.

Once rules are adopted by the EU legislator, it should be ensured as a matter of priority that Member States will not only honour their obligation to speedily implement and apply these rules, but also that citizens are equipped with effective means to obtain redress when these rules are breached. At national level, the effectiveness of specialised institutions, such as National Human Rights Institutions, equality bodies and data protection authorities, is important to help citizens to better enforce their fundamental rights to the extent that Member States apply EU law.

4) Enhancing the scope of EU action on fundamental rights?

People's interest in and expectations about the enforcement of fundamental rights by the EU are high. The Commission receives each year several thousands of letters from the general public regarding fundamental rights, freedom of movement, equal treatment, protection of personal data and related areas. Approximately three-quarters of these letters concern cases outside the remit of EU law, where the Charter does not apply and the Commission is not allowed to intervene: currently Member States have to respect the Charter only when national measures come within the scope of EU law. This means for example, that citizens can rely on their EU fundamental rights when they consider they have been treated inhumanely by national border guards at the airport, but they cannot rely on the same rights when they consider they have been treated inhumanely by national police officers in the streets.

This legal outcome has been a deliberate choice of Member States in the Charter and the Treaty. However, in the context of any future policy debate concerning changes to the treaties, one option could be to make all fundamental rights guaranteed in the Charter directly applicable in the Member States by removing some or all the limitations of Article 51 of the Charter⁴. This would allow citizens to rely on these rights before national courts in all situations including those which are not related to the implementation of EU law.

A stronger role for FRA could also be considered, which is a long-standing call from the European Parliament and civil society. Under the current Treaty, the strengthening of its role would require the agreement of all Member States. This prevented the adoption of a Commission proposal to give FRA the possibility to work on its own initiative in the area of judicial cooperation in criminal matters and police cooperation. A Treaty amendment could put the legal basis of FRA into the ordinary legislative procedure, thus allowing for a change in the Agency's mandate to look more widely into the situation of all fundamental rights.

IV. Questions

1. *What actions at EU and national level are required to increase the effectiveness of the rights enshrined in the Charter of Fundamental Rights?*
2. *Should the rights guaranteed in the Charter be directly applicable in the Member States in all cases, by abolishing the limitations of Article 51 of the Charter?*

Full information on submitting contributions:

http://ec.europa.eu/justice/events/assises-justice-2013/discussion_papers_en.htm

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³ Vogenhuber Report of the European Parliament – Document ref: A6-0034/2007.

⁴ See also speech of Vice-President Viviane Reding, EU Justice Commissioner, at the XXV Congress of FIDE (Fédération Internationale pour le Droit Européen) Tallinn, 31 May 2012. Available at: http://europa.eu/rapid/press-release_SPEECH-12-403_en.htm?locale=en