

Charter of Fundamental Rights of the European Union

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This report concerns the 2011 Report on the Application of the EU Charter of Fundamental Rights.

The report notes that two years after the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights of the European Union¹ (the 'Charter') has become a point of reference commonly used in the development of EU policies. After its entry into force, the Commission adopted a Strategy on the effective implementation of the Charter ('Charter Strategy') setting an objective that the EU sets a good example as regards the respect of fundamental rights when the Union legislates. The Commission further committed to preparing annual reports to better informing citizens on the application of the Charter and to measuring progress in its implementation. Both the Charter Strategy and the first Annual report on the application of the Charter have triggered discussions in the European Parliament, in the Council as well as in the Committee of Regions and in the European Economic and Social Committee.

The Charter is of great interest not only to EU institutions but also to the general public: according to a recent Eurobarometer survey two-thirds of respondents across the EU are interested in learning more about their rights as enshrined by the Charter (66%), where to go if they feel that these rights have been violated (65%) and when the Charter applies and when it does not (60%).

This report aims to address this wish to be better informed about the Charter. It reviews progress in ensuring the effective implementation of the Charter and highlights important developments in 2011. The

document is accompanied by two working documents on the application of the Charter by all EU institutions and Member States and the other on the progress in the implementation of the Strategy for equality between women and men (2010-2015).

Application of the Charter: the Charter Strategy and the 2010 Report generated debates in all EU institutions on how to make the Charter effective for citizens and on how to ensure its respect throughout the legislative process. This momentum initiated by the Commission has already delivered first concrete results.

The report notes the following:

- **The Commission assessment of the impact on fundamental rights when it prepares legislative proposals:** the Commission not only guarantees that its proposals are compatible with the Charter, it also ensures that the Charter is respected when Member States implement EU law.
- **Commission's intervention as regards the Hungarian media law:** following the Commission's intervention on the Hungarian media law, using the full extent of its legal powers to enforce the *acquis*, the Hungarian government agreed to amend its national media law so that it complies with substantive EU law. The Commission, as guardian of the Treaties, decided to take action against a number of new provisions in Hungarian legislation, namely on the independence of the data protection authority and on the discriminatory impact of the mandatory retirement age for judges, prosecutors and notaries. On 16 February 2012, the European Parliament adopted a [resolution](#) calling on the Hungarian government to comply with the recommendations, objections and demands of the European Commission, the Council of Europe and the Venice Commission and calling on the

European Commission, the guardian of the Treaties, to monitor closely the possible amendments and the implementation of the said laws and their compliance with the letter and spirit of the European treaties.

- **European Parliament's intervention:** when acting as co-legislator, it stressed the fundamental rights dimension of new proposals for EU law. For example, the European Parliament approved the Commission's proposal to amend the [Qualification Directive](#) which will enhance the rights granted to refugees and beneficiaries of subsidiary protection in the EU.
- **Council's intervention:** the Council established Guidelines to identify and deal with fundamental rights issues arising in the discussion on proposals before the Council's preparatory bodies.
- **EU Court of Justice's intervention:** the Court of Justice of the European Union has increasingly referred to the Charter in its decisions: the number of decisions quoting the Charter in its reasoning rose by more than 50% as compared to 2010, from 27 to 42. National courts when addressing questions to the Court of Justice (preliminary rulings) have also increasingly referred to the Charter: in 2011, such references rose by 50% as compared to 2010, from 18 to 27. At the end of 2011, the Court issued a landmark ruling on the implementation of the [Dublin Regulation](#) on determining the Member State responsible for the assessment of asylum application in the EU²³. The Court stressed that Member States are under the obligation to respect the Charter when they establish the responsibility for examining an asylum application. Member States must not transfer an asylum seeker to another Member State if it is such that they cannot be unaware of systemic deficiencies in the asylum procedure and reception conditions amounting to substantial grounds for believing that person would face a real risk of being subjected to inhuman or degrading treatment.

Most important development in 2011: the Commission has pursued a vigorous policy of ensuring the effective implementation of the Charter in a wide variety of areas covered by EU law. The annex to this Report presents many examples of the application of the Charter involving the rights covered by the six titles of the Charter (Dignity, Freedoms, Equality, Solidarity, Citizens' rights and Justice), including important steps to prepare the proposal for new EU rules on data protection to be presented in 2012.

Other important developments have also been identified:

- promoting human rights in third countries;
- the enlargement process;
- expulsion of aliens;
- a new momentum in the enforcement of citizens' right to free movement;
- promoting the rights of the child;
- reinforcing victims' rights and procedural rights;
- fighting against xenophobic and racist hate speech;
- contributing to EU competitiveness (freedom to conduct a business, intellectual property shall be protected).

The Commission took concrete steps to comply with the requirement enshrined in the Lisbon Treaty that the EU accedes to the European Convention on Human Rights. The Commission conducted technical negotiations on accession with experts from Member States of the Council of Europe as the current parties to the Convention. A draft accession agreement, elaborated in June 2011, is currently under scrutiny within the Council.

To conclude, the EU took further concrete steps for the effective implementation of the Charter. These efforts served to help citizens enjoy their fundamental rights when EU law comes into play. In particular, in times of economic crisis, a legally stable environment based on the rule of law and the respect of fundamental rights is the best guarantee for citizens' trust and the confidence of partners and investors.