

Opinion of the Committee of the Regions on the ‘Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union’

(2012/C 9/11)

THE COMMITTEE OF THE REGIONS

- commends the strengthening of fundamental rights in the EU. Although Europe has a solid legal framework as regards human rights, there are deficiencies in the way rights are guaranteed in practice;
- supports the three main strands of the Commission’s strategy, but also notes that the strategy mainly addresses the institutions and more specifically what the Commission should and must do. The Committee advocates taking a more strategic approach to implementing the Charter, which will require the involvement of all authorities, including at local and regional level;
- is keen to help create ‘a culture of multilevel promotion and protection of rights’, which also means raising public awareness of fundamental rights and drawing the attention of officials of the European Union, the Member States and the regional and local authorities to the force of the Charter of Fundamental Rights as directly applicable law;
- thinks that the proposed strategy should be made clearer with respect to the processes for preparatory consultations on proposed legislation. These processes must be clarified so that impact assessments are accurate and useful. It is important in terms of strengthening democracy in the EU that different stakeholders, including local and regional authorities, be given the possibility to express their views.

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Reference document	Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union COM(2010) 573

I. POLICY RECOMMENDATIONS

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Background

1. notes that the EU's Charter of Fundamental Rights has become legally binding now that the Lisbon Treaty has entered into force. Rights under the Charter can be asserted before the Court of Justice in Luxembourg, and national courts must take the Charter fully into account in their own rulings. The Lisbon Treaty also states that the EU is to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms;

2. notes that cases relating to rights under the European Convention are brought before the European Court of Human Rights in Strasbourg. When the EU ratifies the European Convention, it will therefore also be possible for the European Court of Human Rights in Strasbourg to give rulings on EU legislation;

3. notes that individual citizens in the Member States of the Council of Europe can bring actions for infringements of the European Convention, while EU Member States, the EU institutions or legal or natural persons can bring actions for infringements of the EU's Charter of Fundamental Rights. One prerequisite for a well-functioning legal system throughout Europe is that the EU should ratify the European Convention soon;

4. recalls that the EU Charter clearly defines all the fundamental rights that are protected by the EU, bringing them together in a single text. It increases legal certainty and clarifies the rights of individuals. The Charter is addressed to the EU institutions and the Member States to the extent that they apply or implement EU law;

5. notes that the Charter states that EU competences are not extended through the new provisions. The division of competences between the EU and the Member States is to be respected;

6. points out that the role of local self-government is recognised in the Treaty on European Union, where respect for national identities (Article 4(2)) now covers the Member States' fundamental political and constitutional structures, including local and regional self-government. Strong self-government at subnational level is a key aspect of democracy

in the EU countries. The subsidiarity principle is re-formulated in the Lisbon Treaty and extended for the first time to include local, regional and national levels of government. All the EU Member States have now also ratified the European Charter of Local Self-Government;

7. notes that the European Commission's communication (COM(2010) 573 final) sets out the Commission's strategy. One of the strategy's overarching aims is to promote a 'fundamental rights culture'. It contains three key elements:

— *the Union must be exemplary,*

— *better informing the public, and*

— *issuing an annual report on the application of the Charter;*

8. notes that the strategy focuses primarily on the actions and processes of the European Commission and the other EU institutions, and that it states that the Commission will check that all EU legislation is compatible with the Charter at each stage of the legislative process, including implementation at national, regional and local level;

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General comments

9. commends the strengthening of fundamental rights in the EU. Although Europe has a solid legal framework as regards human rights, there are deficiencies in the way rights are guaranteed in practice;

10. therefore welcomes the European Commission's strategy for the practical implementation and application of the Charter of Fundamental Rights by the EU. It shares the Commission's view about the importance of efforts to improve the application of rights guaranteed by the EU;

11. supports the three main strands of the Commission's strategy, but also notes that the strategy mainly addresses the institutions and more specifically what the Commission should and must do. The Committee advocates taking a more strategic approach to implementing the Charter, which will require the involvement of all authorities, including at local and regional level;

12. stresses the importance of critically appraising the sustainability of the division of competences regarding fundamental rights set out in the EU Treaties and in the Charter over the next few years, since the content of the Charter is to be implemented both through political action and judicial rulings. The Charter of Fundamental Rights does not extend the EU's competences, and account must be taken of the role played by local and regional authorities in countries' political systems;

13. points to the diversity of local and regional democracy in the various Member States. National constitutional traditions and local self-government must be respected when implementing fundamental rights. The strategy should be based on partnership between individuals and government, and between the different levels of society. More attention must be paid to the local and regional levels, and they must be given a role in implementing the Charter;

14. notes that it is at local and regional level that many of these fundamental rights are provided for and guaranteed, for instance in relation to healthcare (Article 35 of the Charter), education (Article 14), property rights (Article 17), social security and social assistance (Article 34), consumer protection (Article 38), and democratic participation (Articles 39 and 40);

15. notes that the role of local and regional government in implementing these human rights has also been underlined by the Congress of Local and Regional Authorities of the Council of Europe (CLRAE) (e.g. in the report on *The role of local and regional authorities in the implementation of human rights*, Lars O. Molin, 2010) and by the EU's Agency for Fundamental Rights (e.g. in the discussions held on 26 November 2010 with the CoR's CIVEX commission about multilevel protection and promotion of fundamental rights);

16. believes that in order to increase the impact of the strategy and ensure that fundamental rights can be fully applied it is vital to raise the profile of the local and regional levels of government much more strongly within the strategy and to highlight their strategic role in it; encourages local and regional authorities of member states to elaborate and implement, via open consultation with citizens and local stakeholders, their own charters of fundamental rights which match the EU Charter;

17. points out that joint efforts and joint responsibility are required at all levels. Efforts to achieve efficient and effective cooperation between all levels must therefore be a key element of the strategy. Regular dialogue on the application of fundamental rights is needed between all policy-making levels in the EU, as Thomas Hammarberg, the Council of Europe's Commissioner for Human Rights, has also stressed (*Recommendation on systematic work for implementing human rights at the national level – CommDH(2009)3*);

18. refers to the annual dialogue on multilevel protection and promotion of fundamental rights organised by the Committee of the Regions' CIVEX Commission and the EU's Agency for Fundamental Rights (FRA) in Vienna as a good example of such multilevel cooperation. There is a need for

regular dialogue in order to get all levels involved in protecting and promoting fundamental rights and to keep local and regional authorities throughout the European Union informed about fundamental rights;

19. notes that the FRA is also running a project on 'Joined-up governance: connecting fundamental rights' to develop cooperation between the various policy-making levels in the EU, with the aim of coordinating them to ensure that fundamental rights endure;

20. is keen to help create 'a culture of multilevel promotion and protection of rights', which also means raising public awareness of fundamental rights and drawing the attention of officials of the European Union, the Member States and the regional and local authorities to the force of the Charter of Fundamental Rights as directly applicable law; calls on the European Commission to promote appropriate instruments (e.g. e-learning) to create a uniform basis for application of the law;

21. notes that all the EU Member States have ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and are therefore supposed to uphold, including at sub-national levels of government, the principle of respect for fundamental human rights and freedoms set out in that text. All the Member States have also ratified the European Social Charter of the Council of Europe (and most have ratified the updated Social Charter, which guarantees additional rights). The rights covered by that act apply to all individuals living in the territory of the EU, which also means citizens of third countries living in an EU Member State. Much of its content can also be found in the EU's Charter of Fundamental Rights;

22. argues that the fundamental rights protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms must be recognised for all individuals residing in any EU country, regardless of citizenship. This represents a basic standard of dignity and freedom accorded to individuals, whether or not they are EU citizens. Most of the articles in the EU's Charter of Fundamental Rights do apply to everyone, including third-country nationals;

23. stresses that an important objective of fundamental rights is to protect the weak, e.g. refugees seeking to enter Europe, and that applying fundamental rights therefore requires commitment and sometimes sacrifices from society;

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The Union must be exemplary

24. thinks that the proposed strategy should be made clearer with respect to the processes for preparatory consultations on proposed legislation. These processes must be clarified so that impact assessments are accurate and useful. It is important in terms of strengthening democracy in the EU that different stakeholders, including local and regional authorities, be given the possibility to express their views;

25. argues that the various authorities must be given sufficient time and opportunities to submit their viewpoints during the preparatory consultations. These authorities may include, for instance, national parliaments, various ombudsmen, or other bodies with responsibility for human rights. Local and regional authorities, as well as civil society organisations, must likewise be involved and be given the opportunity to make their positions known;

26. considers it useful to establish clearly how legislation is affected by rights under the Charter. Assessments of the implications should be thorough, not merely formulaic. It is also positive that the Commission stresses the importance of explaining the reasoning behind acts in order to facilitate application. The checklist provided in the strategy could be useful as a basis for further work;

27. agrees that the EU, and all levels of government within the EU, must set a good example and work actively to guarantee fundamental rights, not just for the sake of the rights themselves, but also so that it can take strong action and set a good example to countries that violate human rights;

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Better informing the public

28. welcomes the European Commission's comments on the importance of the public having ready access to sound information. But the information effort must be evaluated to establish to what extent information actually reaches the public. Only then can its actual effectiveness and accessibility be assessed;

29. would draw particular attention to the potential role of local and regional authorities in providing information. Local and regional authorities are important stakeholders and platforms for reaching out to the public and making people aware of their rights. Good, clear information on where the Charter is applicable and where it is not can avoid misunderstandings as to when individuals may invoke it;

30. feels that EU information should not be a one-way communication process. Local and regional authorities can pass on people's experiences with implementation of the Charter. Dialogue should be about making fundamental rights into real and effective instruments for all members of society. Local and regional levels of government can play a key role here, and this should be pointed out in the strategy;

31. thinks that initiatives taken by local and regional authorities and civil society to combat exclusion form an

important part of these efforts, and therefore welcomes the fact that the Commission intends to take account of information from civil society in the annual report. This will require regular dialogue to get all political levels involved in protecting and promoting fundamental rights, and awareness-raising among local and regional authorities within the EU about issues relating to fundamental rights;

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Annual report

32. believes that the annual reports, the first of which has been published recently, should and will play a key role in follow-up and assessment of the strategy for the implementation of the EU Charter of Fundamental Rights; is disappointed, however, that the present report does not refer to the important role of local and regional authorities in strengthening fundamental rights in the EU, or to the idea of a multi-level system of fundamental rights protection; therefore urges the European Commission to involve local and regional levels of government much more closely in this work in the future;

33. believes that it is necessary to clarify how much of the annual report should relate to the work of the EU institutions, how different legislative proposals are assessed and to what extent the report should discuss the situation with fundamental rights generally in the EU;

34. considers one of the main purposes of the annual report to be to serve as a means of evaluating specific outcomes of the Member States' efforts on human rights. Local and regional authorities' own evaluation of how fundamental rights are safeguarded can also be a source of information. The United Kingdom, for example, has developed a tool to measure equality and human rights (the Equality Measurement Framework), and in Sweden work is being carried out on human rights indicators at local and regional level. The FRA is also developing indicators, as is the Congress of Local and Regional Authorities of the Council of Europe;

35. considers that the fundamental rights of citizens should be given greater weight when drawing up evaluation reports, e.g. gathering data and defining criteria;

36. notes that the annual report is also intended to form the basis for an annual dialogue on fundamental rights. In view of local and regional authorities' key role in implementing fundamental rights, the Committee of the Regions should be invited to participate in this dialogue.

Brussels, 12 October 2011.

*The President
of the Committee of the Regions*
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