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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE
COMMITTEE OF THE REGIONS**

2010 Report on the Application of the EU Charter of Fundamental Rights

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2010 Report on the Application of the EU Charter of Fundamental Rights

INTRODUCTION

With the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights of the European Union¹ has become legally binding. This leads to a substantial reinforcement of European Union governance by the rule of law. It is a milestone on a path begun decades ago. Before, it was the case law of the Court of Justice that obliged the Union to respect fundamental rights. Now, the Charter embodies in a single, coherent and legally-binding instrument the fundamental rights which are binding upon the EU institutions and bodies.

The Charter is not just a text setting out abstract principles. It needs to be put into practice whenever the EU institutions and bodies take action or EU law is otherwise implemented, so that people can effectively enjoy their fundamental rights. That is why the European Commission, in 2010, adopted a Strategy on the effective implementation of the Charter². The objective is that the Union sets an example. The Charter must be respected at each stage of law-making in the EU – from the day the European Commission starts preparing its proposals, throughout their amendments in the legislative process and up to the day they enter into force once adopted by the European Parliament and by the Council, and to their implementation by Member States.

For its part, the Commission has reinforced the evaluation of the impact on fundamental rights of its legislative proposals by establishing a "Fundamental Rights Check-List" to check systematically the compliance of its proposals with the Charter.

In its Strategy, the Commission announced its intention to present an Annual Report monitoring progress on the enforcement of the Charter in the areas where the Union has powers to act. The 2010 Annual Report on the Application of the EU Charter of Fundamental Rights brings together for the first time a coherent overview of the most relevant information illustrating the dynamic application of the Charter.

This Annual Report is illustrated with concrete problems that people are confronted with, explaining how EU institutions took action to solve those problems within their remit or why the EU sometimes could not take action in view of the limits of the powers conferred on it by the Treaties. The Annual Report also describes how the EU institutions, starting with the Commission, take fundamental rights considerations into account in the inception, conception and development of EU policies. The present report and the subsequent editions measure the track record of the EU institutions in implementing the Charter.

¹ Charter of Fundamental Rights of the European Union, OJ C 83, 30.3.2010, p. 389–403.

² COM(2010) 573 final, available at:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0573:FIN:EN:PDF>

1. CLARIFYING WHEN THE CHARTER APPLIES AND WHEN IT DOES NOT

People's interest in and expectations about the enforcement of the Charter are high. However, the Charter does not apply to all situations in which fundamental rights are at issue in the European Union. In 2010, the Commission received more than 4,000 letters from the general public regarding fundamental rights. Approximately three quarters of these concerned cases outside the remit of EU law. This reflects a frequent misunderstanding about the purpose of the Charter and the situations where the Charter applies or does not apply.

In the European Union, the protection of fundamental rights is guaranteed both at national level by Member States' constitutional systems – which pre-date the Charter and have more developed case law – and at EU level by the Charter.

The Charter applies to actions by all EU institutions and bodies. It concerns in particular the legislative work of the European Parliament, the Council and the Commission, which must be in full conformity with the Charter in order to comply with the requirements of EU law. The Charter also applies to the external action of the European Union.³

The Charter applies to Member States only when they are implementing EU law. It does not apply in situations where EU law is not involved and it does not extend the powers of the Union as defined in the Treaties.⁴

Where the Charter does not apply, fundamental rights continue to be guaranteed at national level according to the national constitutional systems. Member States have extensive national rules on fundamental rights, the respect of which is guaranteed by national courts. It is up to national authorities, including the courts, to enforce fundamental rights. Moreover, all Member States have made commitments under the European Convention of Human Rights, independently of their obligations under EU law. Therefore, as a last resort, and after exhausting all remedies available at national level, individuals may bring an action at the European Court of Human Rights in Strasbourg for violation of a fundamental right guaranteed by the European Convention on Human Rights.

The Charter thus complements, but does not replace national constitutional systems or the system of fundamental rights protection guaranteed by the European Convention on Human Rights.

2. MAKING THE CHARTER MORE EFFECTIVE FOR PEOPLE

In the light of growing public interest in the Charter, there is an urgent need to better inform people as to when the rights of the Charter apply – namely to the acts of the EU institutions and bodies, and of the Member States only when they are implementing EU law – and on how

³ In accordance with Article 21 of the Treaty on European Union, the Union's action on the international scene is designed to advance in the wider world democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity and the respect for the principles of the United Nations Charter and international law. When implementing Article 21 TEU, the EU applies the Charter, as well as applicable United Nations human rights standards. The EU annual report on human rights and democracy in the world is a separate report covering the Union's action in non-member countries.

⁴ Article 51(2) of the Charter states that it does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

to enforce them in practice if they are violated. People should know where they can turn for assistance in such cases. People should also be informed about where to turn in cases outside the field of application of the Charter, notably when national authorities act without implementing EU law. Providing appropriate information is a key to ensure that no violation remains without a genuine possibility for redress.

2.1. Taking action at EU and at national level

The Charter protects individuals and legal entities against actions by the EU institutions and bodies which are not in conformity with fundamental rights. EU institutions and bodies must therefore respect the Charter.

The Commission is determined to use all available means to ensure that the Charter is respected at EU level. Where an EU institution or body fails to comply with the Charter, the Court of Justice has the power to review the legality of the act, and the Commission has the power to start respective proceedings.

The public authorities of the Member States – legislative, executive and judicial – are only bound to comply with the Charter when implementing EU law, notably when they are applying EU regulations or decisions or implementing EU directives. If an individual considers that a national authority has violated the Charter when implementing EU law, he can turn to the national courts in the country in question. Under the guidance of the Court of Justice, national judges have the power to ensure that the Charter is respected by the Member States when they implement EU law. The individual can also complain to the Commission, which has the power to start infringement proceedings against the Member State.

Strengthening the dialogue between EU institutions and national bodies involved in the enforcement of fundamental rights, including national equality bodies, will improve the effective protection of citizens.

2.2. Addressing complaints to the right body

Where Member States act outside the implementation of EU law, their national constitutions protect fundamental rights and contain rules for their protection. In these situations, individuals whose fundamental rights may have been violated have an interest in ensuring that their complaint is addressed swiftly to the competent national authority, be it the government, national courts or specialised human rights bodies. The European Court of Human Rights provides an additional layer of protection after all domestic remedies have been exhausted. It should be noted that the Commission is not a court of appeal against the decisions of national or international courts.

Individuals who consider that their fundamental rights have been breached need to have access to practical information on the legal remedies existing in the Member States. The Commission is determined to address this need. This does not mean introducing new mechanisms of fundamental rights protection, but instead requires promoting the use of existing instruments by informing the general public about which body is competent to handle a given complaint.

As a first step, the Commission will enhance the European e-Justice Portal by providing the public with information about where to complain when their fundamental rights have been violated.

In cases where the Charter does not apply, the Commission will examine how the alleged infringements of fundamental rights by Member States could, where appropriate, be re-directed to relevant national authorities. As a first step, the Commission will in 2011 organise a seminar with the European Parliament's Committee on Petitions, national human rights institutions and other national authorities such as Ministries of Justice and equality bodies, and interested parties in order to explore how to establish such a mechanism.

2.3. Communicating clearly on the Charter

The information collected by the Commission in 2010 on the application of the Charter highlights the need to communicate more clearly on where the Charter applies and who does what in the area of fundamental rights.⁵ To avoid delays in the enforcement of fundamental rights and disappointment, national authorities, EU institutions and other bodies, including the EU Agency for Fundamental Rights, should make a common effort to better inform citizens about where the Charter does and does not apply.

3. MOST IMPORTANT DEVELOPMENTS IN 2010

The 2010 Report shows that the fundamental rights enshrined in the Charter are relevant across a range of policies for which the Union is responsible and must always be taken into careful consideration when designing and implementing EU actions: from justice to transport policy, to border management.

The Report presents many examples of application of the Charter in all its six titles (Dignity, Freedoms, Equality, Solidarity, Citizens' rights and Justice), covering a number of EU policies.

For example, respect for the rights under the title on **Dignity** has been an important concern in the area of immigration and subject to particular attention in legislation adopted in 2010, such as the Decision on the surveillance of the external sea borders⁶ and the amendments to the FRONTEX Regulation⁷. Concerns regarding human dignity were also taken into account in the Commission's Communication on security scanners at European airports⁸.

Likewise, a number of issues have shaped Commission actions in the areas covered by the title on **Freedoms**. The freedom of the media and the freedom to conduct a business received

⁵ This is corroborated by a recent survey commissioned by the European Ombudsman and the European Parliament. According to the survey, 72% of European citizens do not feel well informed about the Charter (press release by the European Ombudsman of 18 March 2011, EO/11/6).

⁶ Council Decision of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 111, 4.5.2010, p. 20–26.

⁷ Proposal for a Regulation of the European Parliament and the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), COM(2010) 61 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0061:FIN:EN:PDF>

⁸ COM(2010) 311 final, available at: http://ec.europa.eu/transport/air/security/doc/com2010_311_security_scanners_en.pdf

particular attention in the Commission's proposal on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁹.

Under the title on **Equality**, there was a strong interest from citizens and the European Parliament in the rights of the child and the Commission took several initiatives in this area, such as the EU Action Plan on Unaccompanied Minors (2010 - 2014)¹⁰. Respect for non-discrimination on various grounds, including sex and race, remains an important concern confirmed by data provided by the EU Agency for Fundamental Rights.

Concerning the title on **Solidarity**, the Commission deployed efforts to enable the effective application of EU instruments linked to the fundamental rights of workers.

The rights under the title on **Justice** were referred to in several Court of Justice rulings, in particular the right to an effective remedy.

Beyond these issues, the analysis of requests from citizens and from the European Parliament shows that the top concerns in 2010 were data protection, access to justice, the integration of Roma and promoting equality.

3.1. Data protection

The Charter guarantees the right of individuals to the protection of personal data (Article 8 of the Charter). Europeans take a keen interest in these issues and are often concerned about how their personal data is being used, as reflected in the number of questions by citizens and by the European Parliament in 2010. These questions concerned a wide range of topics, from protection of data in the application of new technologies, to the respect of data protection rules by third countries. Requests drew attention to issues such as fingerprinting of school children, Google Street View, video surveillance systems at the workplace, social networking websites, collection of data in census operations, and the funding of research into new technologies in the field of security.

Technology easily allows individuals to share information about their behaviour and preferences, and make it publicly and globally available on an unprecedented scale. In response to these challenges, the Commission adopted in 2010 a comprehensive approach on personal data protection in the EU¹¹, which sets out key objectives for the reform of the EU data protection legal framework: strengthening the rights of individuals (for example by increasing transparency and enhancing the control over personal data), enhancing the internal market dimension (by reducing administrative burden and ensuring a level-playing field), revising data protection rules in the area of police and judicial cooperation in criminal matters so that personal data is highly protected in these areas, including when data is transferred outside the EU, and more effective enforcement of the rules (including by strengthening and

⁹ Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, COM(2010) 748 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0748:FIN:EN:PDF>

¹⁰ Communication from the Commission to the European Parliament and the Council - Action Plan on Unaccompanied Minors (2010 – 2014), COM(2010) 213 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF>

¹¹ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, A comprehensive approach on personal data protection in the European Union, COM(2010) 609 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0609:FIN:EN:PDF>

further harmonising the role and powers of Data Protection Authorities). The Commission will present proposals for a new general data protection legal framework in 2011.¹²

On 10 February 2010, the European Parliament stressed the need for data protection to be better taken into account in international agreements on data transfers for the purpose of fighting terrorism and voted against the proposed agreement on the Terrorist Financing Tracking Programme (TFTP). This led the Commission to propose a new agreement that included stronger safeguards for data protection, which was approved by the European Parliament and entered into force on 1 August 2010.¹³ Also the Court of Justice of the European Union highlighted the importance of the fundamental right of data protection on 9 November 2010 by invalidating part of EU legislation that required the publication of the names of natural persons that were recipients of funds deriving from the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development.¹⁴

3.2. Access to justice

Access to justice is not only a fundamental right, guaranteed notably by Article 47 of the Charter. Issues related to justice very often affect the daily lives of many individuals across the EU. Where to file legal claims in another Member State? What are my rights as a victim in court proceedings? These are just a couple of the questions that many Europeans are confronted with. In 2010, many people wrote to the Commission to complain they had not received or could not find sufficient assistance or legal aid to handle their cases before national courts. Many citizens complained about long or costly judicial procedures that prevented them from having access to justice. Some letters contained allegations of corruption, of violation of the principle of equality of arms or of lack of independence of certain national courts, and violation of the right to a fair trial. The Commission could not deal with many of these issues as they fall within the competence of Member States.

To enhance the rights of suspects and accused persons who do not understand or speak the language of criminal proceedings, the EU in 2010 adopted common EU minimum standards on the right to interpretation and translation¹⁵. The Commission also proposed rules requiring that suspects of a criminal offence be informed of their rights in a language they understand¹⁶. Anyone arrested either for a criminal offence or under a European Arrest Warrant will be informed in writing, in a document called Letter of Rights, of their basic rights at the time of arrest and of what they are accused. In 2011, the Commission will continue to implement the Roadmap on Procedural Rights setting out a programme of legislation to guarantee fair trials, by proposing rules to render effective the access to a lawyer and the right to communicate with family members, consulates or employers.

¹² In this context, other relevant fundamental rights enshrined in the Charter, and other objectives in the Treaties, have to be fully taken into account while ensuring the fundamental right to the protection of personal data.

¹³ Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program, OJ L 195, 27.7.2010, p. 5–14.

¹⁴ ECJ, Joined cases C-92/09 and C-93/09, *Volker und Markus Schecke, Eifert*, 9.10.2010.

¹⁵ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280, 26.10.2010, p.1–7.

¹⁶ Proposal for a Directive on the right to information in criminal proceedings, COM(2010) 392 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0392:FIN:EN:PDF>

In courts, not only the defendant, but also the victims of crime have rights that need to be respected and the Commission is keen on improving their situation. The Commission intends to present in 2011 a package of measures to improve the rights, protection and support of all victims of crime throughout the justice process and beyond the trial.

3.3. The fundamental rights of Roma

While the EU Treaty recognises, in Article 2, the rights of people belonging to minorities, Article 21 of the Charter prohibits any discrimination based on ethnic or social origin or membership of a national minority. With 10 to 12 million people, the Roma are Europe's largest ethnic minority. A large proportion of Roma people in the EU are severely affected by unemployment, extreme poverty, poor housing, low health standards and difficult access to education. The social and economic inclusion of Roma is therefore a priority for the EU, as underlined by the Commission on 7 April 2010 in its Communication outlining the main challenges of Roma integration for all EU Member States.¹⁷

All EU citizens have the right to move and settle down in another EU country and the right not to be discriminated. National authorities only have the right to expel EU citizens or to withdraw their right of residence under certain strict and clear conditions, defined in the EU's Free Movement Directive of 2004¹⁸, which also includes procedural safeguards to avoid arbitrary, discriminatory or disproportionate decisions and thereby to guarantee fundamental rights, including the prohibition of collective expulsions (Article 19(1) of the Charter). To ensure these rights, the Commission took immediate action following events in the summer of 2010 involving the expulsion of EU citizens of Roma origin from France. The Commission carefully checked whether the relevant operations had been carried out in full compliance with EU requirements. Following the Commission's action, France and other Member States are now changing their rules in order to bring them fully in line with EU rules on free movement.

On a more structural basis, the social and economic integration of Roma requires the active commitment of the Member States, supported by the European Union. Following the events in summer 2010, the Commission set up shortly afterwards an internal Task Force to assess the use of EU funding in the Member States. The preliminary findings of the Task Force show that Member States do not make adequate use of EU funding opportunities for the effective social and economic integration of Roma. Weaknesses in the development of strategies, the lack of specific measures to address the problems faced by Roma people, the lack of know-how and administrative capacity to use EU funds, and the lack of involvement by civil society and Roma communities in developing and implementing integration measures, are the main areas of concern identified by the Task Force.

In 2011, the Commission will adopt an EU framework for national Roma integration strategies. The Commission will also continue to ensure that Roma people benefit from their rights as EU citizens without discrimination.

¹⁷ Communication on the social and economic integration of the Roma in Europe, COM(2010)133 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0133:FIN:EN:PDF>

¹⁸ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30.4.2004, p. 77–123.

3.4. Promoting equality

In 2010, the Commission expressed a strong commitment to gender equality by adopting the Women's Charter¹⁹ and a Strategy for Equality between Women and Men (2010-2015)²⁰. The Commission pointed out that despite a general trend towards more equality in society and on the labour market, progress in eliminating gender inequalities remains slow. It defined challenges and action for the following five priority areas: equal economic independence; equal pay for equal work and work of equal value; equality in decision-making; dignity, integrity and an end to gender-based violence; and gender equality outside the EU. Achieving progress in all these areas would offer genuine choices to many women and men.

To empower women and men with disabilities so they can enjoy their full rights and benefit fully from their participation in society, the Commission in 2010 launched the Disability strategy²¹. The Strategy identifies eight priority areas: accessibility, participation, equality, employment, education and training, social protection, health and external action. In December 2010, the EU became party to the UN Convention on the Rights of Persons with Disabilities (UNCRPD). The Strategy defines EU mechanisms to implement this convention, which will supplement national action.

3.5. The EU prepares for accession to the European Convention on Human Rights

The EU Treaty requires the EU to become a member of the European Convention on Human Rights. This is why the Commission recommended on 17 March 2010 to the Council to open accession negotiations with the Council of Europe. On the basis of a mandate agreed by the Council, the Commission launched accession negotiations on 7 July 2010. The EU's accession to the European Convention of Human Rights will complement the strong protection of fundamental rights that already exists in the Union's legal order through the EU's own Charter of Fundamental Rights and the fundamental rights developed over time by the Court of Justice. It will introduce an additional judicial control in terms of protecting fundamental rights in the EU. Accession will further embed a common culture of fundamental rights in the EU, and show that the EU puts its weight behind the Strasbourg system of rights protection. It will also ensure that there is a harmonious development of the case law of the Court of Justice and the European Court of Human Rights.

CONCLUSION

To ensure that citizens fully benefit from the EU Charter of Fundamental Rights, EU institutions as well as the national authorities must clearly explain where the Charter applies,

¹⁹ Communication from the Commission A Strengthened Commitment to Equality between Women and Men A Women's Charter Declaration by the European Commission on the occasion of the 2010 International Women's Day in commemoration of the 15th anniversary of the adoption of a Declaration and Platform for Action at the Beijing UN World Conference on Women and of the 30th anniversary of the UN Convention on the Elimination of All Forms of Discrimination against Women, COM(2010) 78 final, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0078:FIN:EN:PDF>

²⁰ COM(2010) 491 final, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0491:FIN:EN:PDF>

²¹ Communication European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, COM(2010) 636 final, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:EN:PDF>

and where it does not. This first Annual Report is a first concrete step taken by the Commission to this end.

The Commission will present such a report each year in order to monitor progress made in the application of and compliance with the Charter and to ensure that the EU maintains an impeccable fundamental rights record. The Annual Reports will support the effective enforcement of the Charter in a continuous, determined and transparent manner with the involvement of all interested parties. With these reports, the Commission intends to offer an opportunity for an annual exchange of views with the European Parliament and the Council on the application of the Charter. The Commission will take stock in the coming years of the lessons that can be drawn from the effective implementation of the Charter, as well as of the concerns expressed by individuals, and will adjust its actions accordingly.