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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**

**2017 Annual Report on the Application of the EU Charter of Fundamental Rights**

{SWD(2018) 304 final}

# 1. Introduction

The European Union is a ‘union of values’ as enshrined in Article 2 of the Treaty on European Union and emphasised by European Commission President Juncker in his State of the Union address on 13 September 2017.<sup>1</sup> Three pillars anchor the European Union: fundamental rights, democracy and the rule of law. The EU Charter of Fundamental Rights (‘the Charter’) must guide all EU action. It provides a modern set of fundamental rights to which EU institutions and Member States, when implementing EU law, are legally bound.

Fundamental rights apply to everyone. Respecting them is key to ensuring that the EU is a place where people can prosper, enjoy their freedoms and live their lives without discrimination.

This report shows that, in 2017, the structures and tools put in place to promote a culture of fundamental rights in the EU and ensure that the Charter is a reality in people’s lives have been relevant. The proclamation of the European Pillar of Social Rights in November 2017<sup>2</sup> was a further step towards more equality and less exclusion.

However, fundamental rights were also challenged in the EU in 2017. The independence of the judiciary, a key component of the rule of law and a pre-condition for the effective enforcement and enjoyment of fundamental rights, was threatened. This led the Commission to propose to the Council, for the first time, to adopt a decision under Article 7(1) of the Treaty on European Union.<sup>3</sup> Furthermore, the work of civil society organisations active in the area of fundamental rights was questioned and made more difficult. Women’s rights were also under attack, as discussed at the 2017 annual colloquium on fundamental rights.<sup>4</sup>

It has never been more important to highlight that respect for the Charter of Fundamental Rights is not an option but an obligation for EU institutions and the Member States when implementing EU law.

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<sup>1</sup>Available at: [http://europa.eu/rapid/press-release\\_SPEECH-17-3165\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm).

<sup>2</sup>Available at: [https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights\\_en](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en).

<sup>3</sup>COM(2017)835 final, available at: [http://europa.eu/rapid/press-release\\_IP-17-5367\\_en.htm](http://europa.eu/rapid/press-release_IP-17-5367_en.htm).

<sup>4</sup>See focus section of this report.

## 2. Applying the Charter in and by the EU

### 2.1 Promoting and protecting fundamental rights

#### *Promoting social rights and fairness in the EU*

Building on the rights enshrined in the Charter, the **European Pillar of Social Rights**<sup>5</sup> was jointly signed and proclaimed by the European Parliament, the Council and the Commission on 17 November 2017. The Pillar sets out 20 key principles and rights to support fair and well-functioning labour markets and welfare systems. The ‘Social Scoreboard’<sup>6</sup> monitors the implementation of the Pillar and feeds into the European Semester, the EU’s yearly economic policy coordination cycle.

It is for the EU Member States to deliver on the Pillar, working with social partners and civil society. The Union’s institutions help set the frame. For instance, in 2017, the Commission put forward a proposal for a **Directive on Transparent and Predictable Working Conditions in the European Union**.<sup>7</sup> This will complement existing obligations and create new minimum standards to give all workers, including those in precarious forms of employment, more predictability and clarity as regards their working conditions (Article 31 of the Charter).

Furthermore, on 26 April 2017 the Commission adopted an **initiative to support work-life balance for working parents and carers**.<sup>8</sup> It includes legislative measures to ensure better work-life balance opportunities for men and women with caring responsibilities and a gender-balanced use of leave and flexible work arrangements. It also envisages policy measures to support Member States in providing accessible, affordable and quality formal care services and to address economic disincentives for women (Articles 21, 23, 24, 25, 26 and 33 of the Charter).

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<sup>5</sup>Available at: [https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights\\_en](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en). Data sources are available at: <http://ec.europa.eu/eurostat/web/european-pillar-of-social-rights>.

<sup>6</sup>Available at: <https://composite-indicators.jrc.ec.europa.eu/social-scoreboard/>.

<sup>7</sup>Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union, COM(2017)0797 final.

<sup>8</sup>Communication from the Commission, An Initiative to Support Work-Life Balance for Working Parents and Carers, COM(2017)252 final.

In the same vein, on 11 November 2017 the Commission adopted an **action plan to combat the gender pay gap**.<sup>9</sup> It focusses on issues such as: improving the application of the equal pay principle; combating segregation; better valuing women's skills, efforts and responsibilities; uncovering inequalities and stereotypes; raising awareness of the gender pay gap and building stronger partnerships to tackle it.

The **guidelines for Member States' employment policies**<sup>10</sup> were also revised to align with the Pillar. The employment guidelines are common priorities and targets for employment and social policies proposed by the Commission, agreed by national governments and adopted by the Council. They are the basis for the country assessments and country-specific recommendations under the European Semester. The revision put the focus on the Pillar principles related to minimum income, adequate unemployment benefits and active support for employment.

In 2017, social policies continued to be a key area of focus for the **European Semester**. Promoting social rights is a key part of structural reforms that aim to foster social justice and equality. In 2017, the Commission closely monitored Member States' efforts to improve and increase women's labour market participation and to combat discrimination of disadvantaged groups such as Roma, fight school segregation, and promote inclusive education reform. This showed that certain Member States are still facing challenges in including Roma children in high-quality inclusive mainstream education and in integrating young Roma in the labour market. In particular, the Commission proposed that the Council address country-specific recommendations in this area to Bulgaria, Hungary, Romania and Slovakia. The Commission also closely monitored the Czech Republic's work related to this area.

Furthermore, the Commission proposed to address country-specific recommendations to Ireland on improving quality childcare and social infrastructure, including social housing, and to Spain on improving family support and quality childcare.

In April 2017, the Commission adopted a **Communication on the protection of children in migration**,<sup>11</sup> which sets out EU actions in this area and makes recommendations to Member States to ensure that children in the process of migration are better protected. As follow-up,

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<sup>9</sup>Available at: [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=607452](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=607452).

<sup>10</sup>Proposal for a Council Decision on guidelines for the employment policies of the Member States, COM(2017)677 final.

<sup>11</sup>COM(2017)211 final.

the Council adopted Conclusions on 8 June 2017.<sup>12</sup> The Communication addresses faster identification and immediate protection of children, quicker family tracing and status determination, implementation of procedural safeguards including effective guardianship for unaccompanied children, child-appropriate reception and effective integration. Guardianship is a key procedural safeguard for children's best interests and wellbeing. The Commission took steps to establish a European Network on Guardianship to facilitate cooperation between relevant national authorities and exchange good practices on guardianship.

On 4 December 2017, the Commission also adopted a **Communication on the follow-up to the EU strategy towards the eradication of trafficking in human beings**<sup>13</sup>, ensuring a fundamental rights based, gender specific and child sensitive approach.

*Promoting democracy and fundamental rights through healthy public debate and a vibrant civil society*

In 2017, the Commission launched an **initiative on fake news and the spread of disinformation online**, as announced by President Juncker.<sup>14</sup> This initiative, which also follows-up on the European Parliament's Resolution of 15 June 2017,<sup>15</sup> aims to identify appropriate ways of limiting the impact of the dissemination of fake content and to foster a healthy public debate. The Commission established a High Level Expert Group and launched wide-ranging consultations.<sup>16</sup> In October 2017, the Council addressed these issues in its 3<sup>rd</sup> annual rule of law dialogue, which focused on media pluralism and the rule of law in the digital age.<sup>17</sup>

The work of **human rights defenders**, including civil society organisations active in the field of fundamental rights and democracy, was made particularly difficult in 2017.<sup>18</sup> Their role is

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<sup>12</sup>Available at: <http://data.consilium.europa.eu/doc/document/ST-10085-2017-INIT/en/pdf>.

<sup>13</sup>COM(2017)728, available at: [https://ec.europa.eu/home-affairs/news/trafficking-human-beings-commission-adopts-new-communication-and-commits-new-set-priorities\\_en](https://ec.europa.eu/home-affairs/news/trafficking-human-beings-commission-adopts-new-communication-and-commits-new-set-priorities_en).

<sup>14</sup>See State of the Union Address 2017, available at: [http://europa.eu/rapid/press-release\\_SPEECH-17-3165\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm).

<sup>15</sup>Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0272+0+DOC+XML+V0//EN>.

<sup>16</sup>On 25 April 2018, the Commission published its Communication on "Tackling online disinformation: a European Approach" (reference not yet available).

<sup>17</sup>Available at: <http://data.consilium.europa.eu/doc/document/ST-12671-2017-INIT/en/pdf>.

<sup>18</sup>See the report of the EU Agency for Fundamental Rights available at: <http://fra.europa.eu/en/publication/2018/challenges-facing-civil-society-orgs-human-rights-eu>; See the Opinion of the European Economic and Social Committee available at: <http://www.european-net.org/2017/11/eesc->

key in making fundamental rights and values a reality for everyone and they should be able to carry out their work in a safe and supportive environment. To further support rights defenders, in December 2017, as part of the EU Budget 2018, the European Parliament adopted a preparatory action on an ‘EU fund for financial support for litigating cases relating to violations of democracy, rule of law and fundamental rights’.

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[adopts-opinion-financing-civil-society-organisations/](#); See the report of the Council of Europe available at: [https://rm.coe.int/...on...impact-of-current-national-legislation-policies.../168073e81e](#).

### *Promoting an EU free from racism, discrimination and violence*

The second EU Minorities and Discrimination Survey (EU-MIDIS II), published by the EU Agency for Fundamental Rights in December 2017, showed continued intolerance, violence and hatred across the EU.<sup>19</sup> These concerns were at the centre of the work of the high-level group on combating racism, xenophobia and other forms of intolerance in 2017.<sup>20</sup>

Cooperation with IT companies, national authorities and civil society organisations was strengthened to ensure that online illegal hate speech is quickly identified and taken down. **The monitoring of the implementation of the Code of conduct on countering illegal hate speech online** showed that IT companies had made remarkable progress in this area.<sup>21</sup> On 28 September 2017, the Commission adopted a **Communication on tackling illegal content online**<sup>22</sup> to implement more good practices that prevent, detect, remove and disable access to illegal content. At the same time, it introduced safeguards to avoid over-removal, ensure transparency and protect the freedom of expression.<sup>23</sup>

The high-level group also compiled **guiding principles on hate crime** for law enforcement and criminal justice authorities<sup>24</sup> and on access to justice, protection and support for victims of hate crime.<sup>25</sup> It further developed **guidance on improving the recording of hate crime** by law enforcement authorities,<sup>26</sup> which is now being tested in several Member States.

In May 2017, Muslim and Jewish organisations came together for a joint day of action against **Antisemitism** and **anti-Muslim hatred and discrimination** and addressed specific challenges, such as the security needs of Jewish communities and stereotypes of Muslims in the media.<sup>27</sup> The findings on Muslims published by the EU Agency for Fundamental Rights

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<sup>19</sup> Available at: <http://fra.europa.eu/en/publication/2017/eumidis-ii-main-results>.

<sup>20</sup> Available at: [http://ec.europa.eu/newsroom/just/item-detail.cfm?&item\\_id=51025](http://ec.europa.eu/newsroom/just/item-detail.cfm?&item_id=51025).

<sup>21</sup> Available at: [http://ec.europa.eu/newsroom/just/document.cfm?doc\\_id=49286](http://ec.europa.eu/newsroom/just/document.cfm?doc_id=49286); [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=71674](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=71674). Progress was confirmed in the 3<sup>rd</sup> monitoring published on 19 January [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=612086](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=612086).

<sup>22</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Tackling Illegal Content Online Towards An Enhanced Responsibility of Online Platforms COM(2017)555 final.

<sup>23</sup> On 1 March 2018, the Communication was followed up by a Recommendation on measures to effectively tackle illegal content online, C(2018)1177 final.

<sup>24</sup> Available at: [http://ec.europa.eu/newsroom/document.cfm?doc\\_id=43050](http://ec.europa.eu/newsroom/document.cfm?doc_id=43050).

<sup>25</sup> Available at: [http://http://ec.europa.eu/newsroom/just/document.cfm?doc\\_id=48874](http://http://ec.europa.eu/newsroom/just/document.cfm?doc_id=48874).

<sup>26</sup> Available at: <http://fra.europa.eu/en/news/2017/improving-recording-hate-crime-law-enforcement-authorities>.

<sup>27</sup> Available at: [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=50144](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=50144).

on 21 September<sup>28</sup> and its 2017 overview of Antisemitism showed that there are worrying and pressing concerns to be addressed.<sup>29</sup>

On 30 August 2017,<sup>30</sup> the Commission published a midterm review of the **EU Framework for national Roma integration strategies up to 2020**. The review shows how European legal, policy and funding instruments<sup>31</sup> have been mobilised to fight discrimination and promote Roma inclusion. There are signs of progress in education, although segregation is still present and in some cases has even increased. The rate of Roma youth not in education, employment or training increased as well. In 2017, the Commission launched an in-depth evaluation and public consultation on this Framework, to feed reflections on post-2020 policy options.

In 2017, the Commission continued to implement the list of actions to advance **LGBTI equality**.<sup>32</sup> Through the Rights, Equality and Citizenship programme, it supported projects that raise awareness and combat discrimination and intolerance against LGBTI people.

### *Promoting access to justice and effective remedy*

Promoting access to justice and the right to effective redress under Article 47 of the Charter is a precondition for the effective enjoyment of all rights under EU law, including the Charter. The Commission helps Member States fulfil their obligation to ensure effective legal protection in the fields covered by EU law.<sup>33</sup>

Following the adoption of the Communication on **EU law: Better results through better application**,<sup>34</sup> in 2017, the Commission assisted Member States in their efforts to step-up enforcement of EU law for the benefit of individuals and businesses. It organised high-level dialogues and exchanges of best practice with national authorities and courts. It also worked with the European Network of Ombudsmen and helped Member States raise awareness on

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<sup>28</sup> Available at: <http://fra.europa.eu/en/publication/2017/eumidis-ii-muslims-selected-findings>.

<sup>29</sup> Available at: <http://fra.europa.eu/en/publication/2017/antisemitism-overview-2006-2016>. The Agency will publish in 2018 its second survey on experiences of discrimination and hate crime against Jews.

<sup>30</sup> Information from the 2011 Roma pilot project and the EU-MIDIS II survey carried out by the EU Agency for Fundamental Rights fed into this exercise.

<sup>31</sup> Racial Equality Directive, European Semester, European Structural and Investment Funds.

<sup>32</sup> Available at: [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=615032](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=615032).

<sup>33</sup> Article 19(1) of the Treaty on the European Union.

<sup>34</sup> Communication from the Commission EU law: Better results through better application (2017/C 18/02).



citizens' rights under EU law and on the problem-solving tools available at national and EU level.

Improving the **quality, independence and efficiency of national justice systems** also remained a key priority in the context of the European Semester, where the Commission addressed country-specific recommendations to five Member States to help them improve their justice systems.<sup>35</sup> The Commission also pursued cases in which national law does not provide effective redress for a breach of EU law or prevents national judicial systems from ensuring that EU law is applied effectively in accordance with the rule of law and Article 47 of the Charter.

In environmental matters, on 28 April 2017 the Commission adopted a **Notice on access to justice**,<sup>36</sup> which clarifies how individuals and associations can challenge public authority decisions, acts and omissions related to EU environmental law before national courts. The Notice helps citizens decide whether to bring a case before national courts or not. It advises national courts on the Court of Justice of the European Union (CJEU) cases that they should take into account when faced with questions related to access to justice.

## ***2.2. Ensuring the respect of fundamental rights***

EU institutions, bodies, offices and agencies must comply with the Charter in all their actions. Any case of non-compliance can be brought before the CJEU. The Commission is committed to ensuring that fundamental rights are fully respected in all its legislative and policy proposals.

On 12 December 2017, the Commission adopted proposals on a **framework for interoperability between EU information systems**<sup>37</sup> to close information gaps and better

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<sup>35</sup>Croatia, Italy, Cyprus, Slovakia and Portugal. See: [https://ec.europa.eu/info/publications/2017-european-semester-country-specific-recommendations-commission-recommendations\\_en](https://ec.europa.eu/info/publications/2017-european-semester-country-specific-recommendations-commission-recommendations_en).

<sup>36</sup>Available at: [http://ec.europa.eu/environment/aarhus/pdf/notice\\_accesstojustice.pdf](http://ec.europa.eu/environment/aarhus/pdf/notice_accesstojustice.pdf).

<sup>37</sup>Proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (borders and visa) and amending Council Decision 2004/512/EC, Regulation (EC) No 767/2008, Council Decision 2008/633/JHA, Regulation (EU) 2016/399 and Regulation (EU) 2017/2226, COM(2017)793 final, available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20171212\\_proposal\\_regulation\\_on\\_establishing\\_framework\\_for\\_interoperability\\_between\\_eu\\_information\\_systems\\_borders\\_and\\_visa\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20171212_proposal_regulation_on_establishing_framework_for_interoperability_between_eu_information_systems_borders_and_visa_en.pdf) and Proposal for a Regulation of the European Parliament and of the Council on establishing a framework for

protect EU citizens. The aim is to improve the efficiency and effectiveness of EU-wide information-sharing tools by making it possible for them to work together in a better way. Authorised users (such as police officers, migration officials and border guards) will have faster, seamless and more systematic access to the information they need to do their jobs, in full compliance with fundamental rights. The Commission's overall evaluation of the instruments will include an examination of their impact on fundamental rights.

In March 2017, the Commission's **evaluation report<sup>38</sup> on the application of EU rules on countering migrant smuggling<sup>39</sup>** addressed concerns about the criminalisation of actions carried out by civil society organisations or individuals providing humanitarian assistance to irregular migrants. This report reflects the views of a range of stakeholders and acknowledges that the optional nature of EU rules allowing Member States not to criminalise the facilitation of irregular entry when it is conducted on humanitarian grounds may result in a lack of clarity and legal certainty. The Commission is currently engaging with relevant stakeholders on the implementation of this specific aspect of the legal framework.

Following the adoption of the **Directive on combating terrorism<sup>40</sup>** in March 2017, the Commission engaged with civil society to better understand concerns on the impact of counter-terrorism measures on fundamental rights. It is helping Member States to correctly transpose and implement the new Directive, including as regards fundamental rights. These exchanges will feed into the Commission's assessment of the Directive, including its impact on fundamental rights and freedoms (in particular non-discrimination, the rule of law and the level of protection and assistance provided to victims of terrorism).<sup>41</sup>

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interoperability between EU information systems (police and judicial cooperation, asylum and migration), COM(2017) 794 final, available at: <https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-794-F1-EN-MAIN-PART-1.PDF>.

<sup>38</sup>Available at: <https://ec.europa.eu/transparency/regdoc/rep/10102/2017/EN/SWD-2017-120-F1-EN-MAIN-PART-1.PDF>.

<sup>39</sup>Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence (the 'Directive') OJ L 328, 5.12.2002, p. 17; and Council Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence<sup>4</sup> (the 'Framework Decision') OJ L 328, 5.12.2002, p. 1.

<sup>40</sup>Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

<sup>41</sup>Report to be submitted to the Parliament and Council by 2021.

### ***2.3. Raising awareness of the Charter***

To fully enjoy their fundamental rights, people need to know what these are and who to turn to in the event of violations. As follow-up to the Commission's 2016 Charter Report, the Council adopted conclusions on 12 October 2017,<sup>42</sup> in which it underlined the need to increase awareness of the Charter and of digital tools such as e-Justice. The Commission improved **the e-Justice Portal in 2017**.<sup>43</sup> It will include a section on fundamental rights with user-friendly checklists and guidance on the Charter and its scope of application.

The Commission also continued to support **training for legal professionals** on the application of the Charter under the Justice Programme.<sup>44</sup>

### ***2.4 Court of Justice scrutiny of EU institutions***

In its *Opinion 1/15* on the **Draft agreement between Canada and the European Union on the transfer of passenger name record data** from the European Union to Canada, adopted on 26 July 2017, the CJEU found that several provisions of the proposed agreement were incompatible with the right to respect of private life (Article 7) and protection of personal data (Article 8). The Court expressed concerns as to the proportionality, clarity and precision of the rules set out in the agreement and the lack of justification for the transfer, processing and retention of sensitive data. The Commission is carefully assessing the most appropriate way to address the concerns raised by the Court, to ensure the security of EU citizens in full respect of fundamental rights, in particular the right to data protection.<sup>45</sup>

In the *Aisha Muammer Mohamed El-Qaddafi v Council* case,<sup>46</sup> the General Court annulled the Council Decision<sup>47</sup> and Regulation<sup>48</sup> in so far as it maintained the name of Ms Muammer Mohamed El-Qaddafi on the list of people to whom restrictive measures applied in view of the situation in Libya.<sup>49</sup> The measures related to the ban on entry and transit on Libyan

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<sup>42</sup> Available at: <http://data.consilium.europa.eu/doc/document/ST-12913-2017-INIT/en/pdf>.

<sup>43</sup> Available at: <https://beta.e-justice.europa.eu/?action=home&plang=en>.

<sup>44</sup> 2017 Annual Work Programme is available at: [http://ec.europa.eu/justice/grants1/programmes-2014-2020/files/awp\\_2017/2017\\_justice\\_work\\_programme\\_annex\\_en.pdf](http://ec.europa.eu/justice/grants1/programmes-2014-2020/files/awp_2017/2017_justice_work_programme_annex_en.pdf).

<sup>45</sup> Available at: [http://europa.eu/rapid/press-release\\_STATEMENT-17-2105\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-17-2105_en.htm).

<sup>46</sup> T-681/14.

<sup>47</sup> 2014/380/CFSP of 23 June 2014 amending Decision 2011/137/CFSP.

<sup>48</sup> No 689/2014 of 23 June 2014 implementing Article 16(2) of Regulation (EU) No 204/2011.

<sup>49</sup> Annexes I and III to Council Decision 2011/137/CFSP of 28 February 2011 Annex II to Council Regulation (EU) No 204/2011 of 2 March 2011.

territory and provided that funds and financial assets owned or controlled by the people listed are to be frozen. The General Court ruled that it was not possible to conclude from the statement of reasons for the measures why the original grounds for having the applicant's name on the list remained relevant despite the evolution of the situation in Libya. Therefore, it found that the Council infringed its obligation to state the actual and specific reasons for maintaining such restrictive measures - a corollary to the respect for the applicant's right of defence, which also derives from Articles 41, 47 and 48(2) of the Charter.

### **3. Charter application in and by Member States**

#### ***3.1 Developments in fundamental rights and the rule of law***

In 2017, the Commission issued a reasoned opinion on the application by Hungary of EU asylum and migration law interpreted in light of several Charter provisions, including the right to asylum, the right to liberty and security, and the right to an effective remedy.<sup>50</sup>

It also referred to the CJEU three cases that raised issues on the respect of fundamental rights under the Charter. The first concerned the compatibility of reporting and transparency obligations for foreign-funded civil society organisations with the right to freedom of association, the right to respect for private life and the right to the protection of personal data, read in conjunction with Treaty obligations on the free movement of capital.<sup>51</sup> The second case touched upon the right of academic freedom, the right to education and the freedom to conduct a business, in relation to rules affecting the freedom for higher education institutions to provide services and establish themselves anywhere in the EU and to the EU's legal obligations under international trade law.<sup>52</sup> The third case concerned the compatibility of national rules governing the prolongation of mandates of judges of ordinary courts with the principle of judicial independence, in particular with the obligation for Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law as provided by Article 19(1) of the Treaty on European Union, read in connection with the right to an effective remedy and to a fair trial as enshrined in Article 47 of the Charter.

The Charter applies to Member States only when they are implementing EU law. Infringement procedures based on the Charter can therefore only be triggered when a

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<sup>50</sup> Available at: [http://europa.eu/rapid/press-release\\_IP-17-5023\\_en.htm](http://europa.eu/rapid/press-release_IP-17-5023_en.htm).

<sup>51</sup> Available at: [http://europa.eu/rapid/press-release\\_IP-17-5003\\_en.htm](http://europa.eu/rapid/press-release_IP-17-5003_en.htm).

<sup>52</sup> Available at: [http://europa.eu/rapid/press-release\\_IP-17-5004\\_en.htm](http://europa.eu/rapid/press-release_IP-17-5004_en.htm).

sufficient link to EU law is established. However, even when acting outside the implementation of the EU law, Member States are obliged to respect the values on which the EU is founded. In particular, respect for the rule of law is a precondition for the protection of fundamental rights. As regards the situation in Poland, in 2016 and 2017 the Commission issued four Recommendations under its Rule of Law Framework<sup>53</sup> concerning several laws limiting the independence of the judiciary and the separation of powers in Poland and affecting the entire structure of the Polish justice system, in particular the Constitutional Tribunal, the Supreme Court, ordinary courts and the National Council for the Judiciary. In December 2017, the Commission concluded that there is a clear risk of a serious breach of the rule of law in Poland and proposed to the Council to adopt a decision under Article 7(1) of the Treaty on European Union.<sup>54</sup> Simultaneously, the Commission adopted a fourth Recommendation under its Rule of Law Framework, inviting the Polish authorities to solve the problems identified within three months. The Commission also decided to refer Poland to the CJEU for breaches of EU law by the law on ordinary courts organisation.

### ***3.2 Court of Justice guidance to Member States***

In the *Achbita*<sup>55</sup> and *Bouagnaoui*<sup>56</sup> cases, the CJEU clarified the interpretation of provisions under the Employment Equality Directive (2000/78/EC) in the light of the balance to be struck between the freedom of religion or belief (Article 10), the freedom to conduct a business (Article 16), and the principle of non-discrimination (Article 21). Both cases concerned the **prohibition of wearing the Islamic headscarf in the private workplace**. In the *Achbita* case, the Court held that an internal policy relating to the visible wearing of any political, philosophical or religious signs should be assessed having regard to the employer's freedom to conduct a business. Accordingly, a policy of political, philosophical and religious neutrality may constitute a legitimate objective that justifies different treatment, if the means of achieving the aim are appropriate and necessary, in line with relevant case law of the European Court of Human Rights.<sup>57</sup> In the *Bouagnaoui* case, the Court further clarified that, in

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<sup>53</sup>In 2014, the Commission introduced a framework aiming to address situations of emerging systemic threats to the rule of law which cannot be effectively tackled by safeguards at national level or existing instruments (in particular infringement procedures) at EU level. Communication entitled 'A new EU Framework to Strengthen the Rule of Law', COM(2014)158 final.

<sup>54</sup>Available at: [http://europa.eu/rapid/press-release\\_IP-17-5367\\_en.htm](http://europa.eu/rapid/press-release_IP-17-5367_en.htm).

<sup>55</sup>C-157/15.

<sup>56</sup>C-188/15.

<sup>57</sup>The Court of Justice referred, in particular, to the ECtHR judgment of 15 January 2013 in case 48420/10, 36516/10, 51671/10 et al., *Eweida and Others v. the United Kingdom*.

the absence of such a policy, the willingness of an employer to take account of a customer's wish to no longer benefit from the employer's services provided by a worker wearing an Islamic headscarf may not be considered a genuine and determining occupational requirement that could rule out discrimination within the meaning of the Employment Equality Directive.

In the *M.A.S. and M.B.* cases,<sup>58</sup> the Court provided further clarification on the obligation for national courts to disapply national rules on limitation periods if these result in a situation where people charged with serious value added tax (VAT) fraud may escape conviction.<sup>59</sup> The Court held that the obligation to combat fraud and any other illegal activities affecting the EU's financial interests may never run counter to the Charter principle that offences and penalties must be defined by law, which requires that rules of criminal law are precisely determined and cannot be retroactive.

In the *Soufiane El Hassani v. Minister Spraw Zagranicznych* case,<sup>60</sup> the Court held that Article 47 of the Charter (right to an effective remedy) requires the Member States to guarantee, at a certain stage of the proceedings, the possibility to bring the case concerning a final decision refusing a visa before a court.

### ***3.3. National case law quoting the Charter***

National judges play a key role in upholding fundamental rights and the rule of law. The EU Agency for Fundamental Rights found that national courts continued referring to the Charter for guidance and inspiration in 2017, even in a substantial number of cases that fell outside the scope of EU law.<sup>61</sup>

The Charter for instance served as a parameter for assessing Member States' legislation implementing EU law in two cases related to data protection. The Finnish Administrative Court assessed the compatibility of the *Personal Data Act* of 1999 with the Charter in a case concerning the storage of fingerprint data in the passport register. It found that the restrictions of the right to respect for private life and to the protection of personal data are precise and defined in sufficient detail and therefore not contrary to the Charter.<sup>62</sup> The Higher Administrative Court in Germany assessed the compatibility of the German

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<sup>58</sup>C-42/17.

<sup>59</sup>See judgment in Case C- 105/14, *Taricco*.

<sup>60</sup>C-403/16.

<sup>61</sup>EU Agency for Fundamental Rights' 2017 Annual Report, to be published in May 2018.

<sup>62</sup>Finland, Supreme Administrative Court, case 3872/2017, 15 August 2017.

*Telecommunication Act*, implementing the e-Privacy Directive 2002/58/EC, with the Charter. The Court found that the limitation of the freedom to conduct a business (Article 16) was unjustified and hence incompatible with the Charter.<sup>63</sup>

Outside the scope of the application of EU law, the courts used the Charter to strengthen the protection provided by national constitutions. In particular, the Constitutional Court of Croatia, in a case concerning the violation of the right to dignity (Article 1) of a twelve year-old boy due to a body check performed by a security guard, clarified that by joining the European Union, the Republic of Croatia accepted the contents of the Charter, including chapter I on Dignity. Human dignity therefore became a component of the human rights catalogue of the Croatian Constitution.<sup>64</sup> In Bulgaria, the Constitutional Court referred to the Charter in the context of a constitutional review of a provision in the *Judiciary Act*, which prohibits judges and prosecutors from resigning when a disciplinary proceeding is still pending. The Court concluded that the provision violated the Bulgarian Constitution, and also referred to Article 15 of the Charter on the right to engage in work ‘in accordance to which everyone has the right to engage in work and to pursue a freely chosen or accepted occupation’.<sup>65</sup>

#### **4. Focus section: 2017 Annual Colloquium on Fundamental Rights ‘Women’s rights under attack’**

The Annual Colloquium is a unique space for dialogue between policy makers and civil society, aiming to strengthen cooperation and engagement for the protection and promotion of fundamental rights in the EU. The third Annual Colloquium held on 20-21 November 2017 explored the topic of ‘women’s rights in turbulent times’.<sup>66</sup>

Participants discussed the risk of normalising misogyny in society and its impact on women’s fundamental rights in all spheres of life. They underlined that, although threats to women’s rights and to gender equality have been very visible in public discourse recently, so have responses (e.g. Women’s Marches and the #metoo movement online). The role of grassroots actors in defending women’s rights and the role of men in the women’s rights movement were also stressed.

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<sup>63</sup>Germany, Higher Administrative Court North Rhine-Westphalia, case 13 B 238/17, 22 June 2017.

<sup>64</sup>Croatia, Constitutional Court, case U-III-1095/2014, 21 September 2017.

<sup>65</sup>Bulgaria, Constitutional Court, case 6/2016, 31 January 2017.

<sup>66</sup>Available at: [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=115277](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=115277).

A second area of discussion was the key obstacles to gender equality in economic empowerment and political participation. Participants highlighted the fact that gender stereotypes must be tackled from an early age to effectively address women's underrepresentation in work, decision-making and politics. National and European political parties were asked to commit to consistently include women on party lists, for example through greater transparency in candidate selection and women's caucuses. Participants also called for more pay transparency and for horizontal and vertical labour market segregation to be addressed.

Participants also considered the 'culture of violence' in society and the links between violence against women and other forms of violence, including in the context of populist and extremist movements. They emphasised the need to shift the fear and shame away from victims of gender-based violence to perpetrators, and to bring about a cultural change, so that violence and harassment would be considered unacceptable.

The EU's accession to the Council of Europe's Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention)<sup>67</sup> was seen as a strong signal. Work is now being carried out to ensure swift EU ratification. At the end of 2017, all EU Member States had signed the Istanbul Convention and 17 Member States<sup>68</sup> had ratified it.

Throughout the sessions, participants emphasised that different grounds for discrimination (such as gender, race, immigration status and disability) intersect, which should be considered by policy makers. The debate was informed by the results of a special Eurobarometer survey on gender equality.<sup>69</sup>

Colloquium conclusions were published on 8 March 2018.<sup>70</sup> The Commission committed to a number of actions ranging from putting women's rights and gender equality on the agenda at the highest political level, for instance during every meeting of the Commission's Project Team on Sustainable Development, to funding grassroots projects under the Rights, Equality and Citizenship programme.

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<sup>67</sup> Available at: <https://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e>.

<sup>68</sup> BE, DK, DE, EE, ES, FR, IT, CY, MT, NL, AT, PL, PT, RO, SI, FI, SE.

<sup>69</sup> Available at: <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2154>.

<sup>70</sup> Available at: [http://ec.europa.eu/newsroom/just/document.cfm?doc\\_id=50219](http://ec.europa.eu/newsroom/just/document.cfm?doc_id=50219).



## **5. Conclusion**

This year, marking the 70th Anniversary of the UN Universal Declaration on Human Rights, the Commission will pursue efforts to protect and promote fundamental rights. It is determined, including in the context of the future financial framework for the Union, to further support common values.

It will focus its 2018 fundamental rights colloquium on “Democracy”, an opportunity to reaffirm one of the EU’s key values in the run-up to the European elections. A broad participation and representation, sound and transparent information, including in the digital world, and a free and vibrant civil society are the key ingredients for inclusive and healthy democratic societies. These questions will be at the heart of the colloquium discussions.