Q&A: Report on the Charter of Fundamental Rights and on Progress in Gender Equality

What are fundamental rights?
The EU Charter of Fundamental Rights sets out a series of individual rights and freedoms. It entrenches the rights developed in the case law of the Court of Justice of the EU, found in the European Convention on Human Rights, as well as other rights and principles resulting from the constitutional traditions of EU Member States and other international instruments.

On 1 December 2009, with the entry into force of the EU's Lisbon Treaty, the Charter became legally binding on the EU institutions when they act, including by making EU laws, and on national governments whenever they implement EU law.

What is the annual report on the Charter?
After the entry into force of the EU Charter of Fundamental Rights, in December 2009, the Commission adopted a Strategy on the effective implementation of the Charter setting as an objective that the EU is beyond reproach as regards the respect of fundamental rights, in particular when it legislates.

The Commission committed to preparing annual reports to better inform citizens on the application of the Charter and to measure progress in its implementation. The latest Annual Report meets the longstanding and legitimate expectation of placing fundamental rights at the heart of EU policies. It is intended to act as the basis of an informed dialogue between all EU institutions and Member States.

When does the Charter apply?
In the European Union, the protection of fundamental rights is guaranteed both at national level by Member States' constitutional systems and at EU level by the Charter of Fundamental Rights of the European Union.

The Charter applies to all actions taken by the EU institutions. The role of the Commission is to ensure that all its acts respect the Charter. All EU institutions (including the European Parliament and the Council) must respect the Charter, in particular throughout the legislative process.
The Charter applies to **Member States when they implement EU law**. The link between an alleged violation of the Charter and EU law will depend on the situation in question. For example, a connecting factor exists: when national legislation transposes an EU Directive in a way contrary to fundamental rights, when a public authority applies EU law in a manner contrary to fundamental rights, or when a final decision of a national court applies or interprets EU law in a way contrary to fundamental rights.

**How is the Charter implemented in Member States?**

Within the EU, the protection of fundamental rights is ensured by a two-layered system. First, the national system based on Member States' constitutions and international legal obligations, such as the European Convention on Human Rights (ECHR).

Second, the EU system based on the Charter, which comes into operation only in relation to actions by EU institutions, or when Member States implement EU law. The Charter complements existing systems for the protection of fundamental rights, it does not replace them.

The provisions of the Charter are addressed to the Member States only when they are implementing EU law and neither the Charter nor the Treaty creates any new competence for the EU in the field of fundamental rights.

Where the national legislation at stake does not constitute a measure implementing EU law or is not connected in any other way with EU law, the jurisdiction of the Court is not established.
How many questions does the Commission receive about fundamental rights?

During 2012, the Commission received over 4000 letters, petitions and questions from citizens and European Parliamentarians, concerning fundamental rights issues. Among these, 42% concerned situations where the Charter could not apply while in 2010 still 69% of the letters were on cases outside the EU’s competence. This shows that the Commission’s efforts to raise awareness of how and where the Charter applies are paying off.

In a number of cases, the Commission requested information from the Member States concerned or explained to the complainant the applicable EU rules. In other cases, the complaints should in fact have been addressed to the national authorities or to the European Court of Human Rights. Where possible, complainants were redirected to other bodies for more information (such as national data protection authorities).

How many Court of Justice rulings refer to the Charter?

The Court of Justice of the EU has increasingly referred to the Charter in its decisions over the past year: the number of decisions by the Court quoting the Charter in its reasoning almost doubled from 43 in 2011 to 87 in 2012.

For example, in 2012 the Court made clear that the Charter must be taken into account when the legislator decides to delegate powers to the Council or to the Commission, and annulled a Council implementing decision on surveillance of the external sea borders of the EU.

The Court also examined whether the EU institutions actually respect the principle of non-discrimination in their recruitment policy. The Court annulled the notices of several open competitions to become a civil servant of EU institutions which have been published in full only in three official languages.
How often do national courts refer to the Charter?

Likewise, national courts have also increasingly referred to the Charter when addressing questions to the Court of Justice (preliminary rulings): in 2012, such references rose by 65% as compared to 2011: from 27 to 41.

For example, in the field of asylum the Court upheld that whenever an **application for asylum** is lodged at the border or in the territory of a Member State, that Member State is obliged to grant the minimum conditions for reception of asylum seekers laid down in EU law regardless of whether a Member State is responsible for examining the application for asylum under EU law.

The analysis of court rulings referring to the Charter further suggests that national judges use the Charter to support their reasoning, including when there is not necessarily a link with EU law.
How has the Charter been applied in each of the six areas during 2012?

1) Dignity

Security scanners
The Commission received a petition on the extension of the security scanner trial at Manchester airport. Member States and airports wishing to deploy technology to detect unsafe objects must comply with minimum conditions set by EU rules. Most importantly, passengers are entitled to opt out from the security scanner procedure and to be checked by alternative screening methods. Passengers must be informed of the possibility to opt out of the scanner technology used and of the conditions associated with its use. These rules contain the necessary safeguards specifically included to ensure the legislation is in compliance with the Charter, in particular the protection of human dignity.

Transfer of asylum seekers
The EU reached an important agreement on the conditions for the transfer of asylum seekers in the EU (Dublin Regulation). In accordance with case law of the Court of Justice of the EU (CJEU), asylum seekers cannot be sent back to a Member State where there is a serious risk of violation of their fundamental rights under the newly agreed rules.
2) Freedoms: Data protection in focus

Google’s privacy policy
Google announced a new privacy policy, which raised doubts throughout the EU and beyond about its compliance with EU data protection rules. The European Data Protection Authorities undertook a thorough investigation – under the auspices of the French Data Protection Supervisory Authority - and concluded that Google provides insufficient information to its users on its personal data processing operations and is not transparent about retention periods of personal data. The data protection authorities recommended clearer information for the users, asked Google to offer improved control of data across its numerous services, and requested some modification to the tools Google set in place to avoid an excessive collection of data.

Independent data protection authorities
The CJEU upheld its case law confirming that the mere risk of an external influence is sufficient to conclude that the data protection authority cannot act with complete independence in its ruling on the case brought by the Commission against Austria. The Commission also submitted an application to the CJEU against Hungary for violating the independence of the data protection supervisory authority. The personal independence of a national data protection supervisor, which includes protection against removal from office during the term of office, is a key requirement of EU law. The re-organisation of a national data protection authority is not a reason for deviating from this requirement.

Modern data protection rules for Europe
To give full effect to the Charter in the digital age, the Commission proposed in 2012 a major reform of the EU’s rules on the protection of personal data (IP/13/46). Europe’s historical experience has led to a common understanding in Europe that privacy is an integral part of human dignity and personal freedom. This is why the Charter recognises both the right to private life (Article 7) and the right to the protection of personal data (Article 8). The Commission’s proposals modernise the 1995 Directive to guarantee the right of personal data protection in the future.

3) Equality

Roma integration
The Commission assessed Member States’ National Roma Integration Strategies and evaluated, in particular, the key areas of education, employment, healthcare and housing, and how specific requirements (cooperation with civil society, with regional and local authorities, monitoring, anti-discrimination and establishment of a national contact point) as well as funding for Roma integration are addressed (IP/12/499). As a next step, the Commission will assess progress in implementing these strategies and set out a proposal for Recommendations to Member States on Roma inclusion, to be adopted by the Council (MEMO/13/306).
Fighting racism and xenophobia

The Commission reaffirmed its commitment to fight against racism and xenophobia by all means available under the EU Treaties and recalled the responsibility Member States to effectively implement the EU legislation prohibiting racist or xenophobic hate speech and hate crime based on a racist or xenophobic motivation. By the end of the year, all but two Member States (Estonia and Greece) had communicated to the Commission their national laws transposing the EU Framework Decision. The Commission will assess the compliance of those national laws in a report to be presented by the end of 2013.

Fighting homophobia

The Commission launched infringement proceedings against Malta for failing to correctly implement the EU free movement rules and especially the right of same-sex spouses or registered partners to join EU citizens in Malta and reside there with them. As a result of the Commission's action, the Maltese legislation was modified and is now compatible with EU rules on the rights of EU citizens to free movement and non-discrimination.

The Commission intervened in the context of the negotiations of a Council of Europe recommendation on risk behaviours in blood donor management to avoid the draft text discriminating against donors based on sexual orientation. As a result, the Council of Europe committed to further data collection to allow for the eventual definition of donor deferral criteria that are based on objective recognised risks and their relevance to blood safety, irrespective of the sexual orientation of the potential donor.

4) Solidarity

Consumer rights

The Commission's European Consumer Agenda - Boosting confidence and growth (IP/12/491) set outs the principles for consumer policy in the years to come and identifies specific initiatives which aim at empowering consumers, boosting their trust and putting consumers at the heart of all EU policies.

An issue that received particular attention was the marketing practice by Apple of paid-for warranties, which mislead the consumers as to their legal guarantee entitlement under the EU law. In light of a decision taken by a consumer enforcement authority in one Member State concerning the misleading practices of a major supplier of consumer electronics, the Commission urged the enforcers in other countries to also investigate the possible similar breaches on their territories (SPEECH/13/237). The Commission will continue to urge Member States to react strongly with regard to misleading practices in this area.

5) Citizens' rights

Electoral rights

In the 2012, the Commission assessed how EU citizens' electoral rights are implemented at local level and suggested that Member States adopt targeted measures to stimulate citizens' participation and increase overall voter turnout. The Commission also used this opportunity to support non-national EU citizens' involvement in the political life of the municipality in which they reside. The new rule introduced in the Hungarian electoral system which gives non-national EU citizens the possibility to become mayor, and not only a local councillor, is a good example of how non-national EU citizens can become fully integrated in their new community and play an active part in its future.
**Free movement**

The Commission followed a rigorous enforcement policy with a view to achieving the full and correct transposition and application of the EU free movement rules across the EU. As a result of this policy, a number of Member States amended their legislation or committed to adopt, within a set deadline, amendments aimed at ensuring full compliance with these rules. The Commission has pursued the infringement proceedings with Member States that have not yet complied with the above rules (for more details on the cases see Citizenship report MEMO/13/409).

6) Justice

**Fair trial rights and victims’ rights**

Safeguarding procedural rights remains a priority for the EU. The Directive on the right to information in criminal proceedings, adopted on 22 May 2012 (IP/12/575), requires that anyone arrested is informed about their rights in a language that they understand. In addition, the new Directive establishing minimum standards on the rights, support and protection of victims of crime, adopted on 25 October 2012 (IP/12/2000), ensures that victims are given non-discriminatory minimum rights across the EU, irrespective of their nationality or country of residence.

**Justice systems**

Over recent years, Hungary adopted several laws – some adopted directly under its new constitution – which raised important fundamental rights concerns and also came under the scrutiny of the Council of Europe.

The Commission carried out a legal analysis on those points where there was a link with EU law, in accordance with the scope of application of the Charter (Article 51) and the Commission's role as guardian of the Treaties. As a result, it decided to bring infringement proceedings against Hungary concerning the forced early retirement of 274 judges and public prosecutors and concerning the independence of the national data protection authority.

The Court of Justice of the EU's ruling of 6 November 2012 upheld the Commission's assessment according to which the mandatory retirement age for judges, prosecutors and notaries within a very short transitional period is incompatible with EU equal treatment law. Hungary will have to change these rules to comply with EU law (MEMO/12/832).

**Report on progress in equality between women and men in 2012**

**What are the main conclusions of the gender equality report?**

Gender gaps have decreased in several domains in the last five years. However, a closer insight shows that this decrease is not the consequence of an improvement of the situation of women but to a faster deterioration of the situation of men as compared to women, in particular in the first period of the crisis. The EU has therefore experienced a levelling down of gender gaps in employment, unemployment, wages and poverty in recent years.

Meanwhile, significant challenges also remain in fields such reconciling work and family life and gender balance in decision-making. To meet the targets of the Strategy on equality between women and men, further efforts need to be made.
How has the crisis affected women?

Before the crisis, women were slowly catching up with men on the labour markets of all European countries: their employment rate increased from 55% in 1997 to 62.8% in 2007, gaining 6.9 percentage points while the male employment rate increased from 75.3% to 77.9%, gaining 2.6 percentage points in the same period.

The crisis has halted these positive trends. However, male employment dropped faster: the male employment rate went down to 74.6% in 2012, its lowest level since 1997, while female employment decreased only slightly at 62.4%.

**Employment rate of men and women (20-64 years old), EU-27, 1997-2012(%)**

Unemployment and under-employment have significantly increased. Part-time work remains a much more common feature of the employment of women (32%) which is then reflected in women's lower pensions, and their higher risk of poverty. The percentage of men part-timers has also increased to 8.4% of employed men in 2012.

There are considerable differences between Member States when it comes to women in employment. The female employment rate is lower than 60% in Malta, Greece, Italy, Hungary, Spain, Romania, Poland, Slovakia and Ireland, while is above far 70% in Denmark, Finland and Sweden. Some Member States with the highest female employment rates also display a high share of part-time employment among women (the Netherlands, Germany, Austria, Belgium, the United Kingdom).
What are the consequences for women’s pensions?

Due to the higher prevalence of part-time working and career interruption among women, the gender earnings gaps accrue over life. As most pension systems base their pension calculations on career earnings, the gender pension gap is extremely wide: the average pension gap is 39 %, more than twice as large as the gender pay gap of 16 %.

In almost all countries, women face a higher risk of poverty and social exclusion, as measured by the indicators agreed within Europe 2020: 55.7 million (23 %) of men experienced poverty and exclusion whereas 63.8 million (25.2 %) of women were in this situation in the European Union in 2011. The risk of poverty is also significantly higher among elderly women over 75.

How can we improve the situation?

The policies and economic incentives that can enhance women’s participation to the labour market and contribute to reach the target of 75% of employment are well-known: increasing childcare facilities, removing fiscal disincentives for second earners and tackling the gender pay gap.

The second ‘European Semester’ and the 2012 and 2013 Annual Growth Surveys have highlighted these policies. Recent evidence from the OECD confirms that the gain of closing the gender gap in labour market participation by 2020 can lead to an increase of 12.4% in GDP per capita by 2030. It is essential that Member States continue their efforts so that women and men can develop their potential on an equal basis.

What about women in decision-making?

The report finds that women still face high barriers to advance into the highest decision-making levels. The Commission proposal for gender balance on boards of publicly listed companies is a key milestone for gender equality. Intense public debate and regulatory measures have contributed to improving gender balance in decision-making (IP/12/1205) and the 2012 figures on women on boards shows the highest year-on-year change yet recorded (IP/13/51).
And violence against women?

New commitments have been made and further steps have been taken in 2012 and in 2013 at European level to combat violence against women, in particular the completion of the legal framework to guarantee rights and support for victims of crime and for all women who have fallen victims of violence.

The Directive on minimum standards for victims of crime was adopted by the European Parliament and the Council in 2012 (IP/12/2000). It includes the right to respect and recognition, the right to provide and receive information and the right to protection. It also aims to ensure that the needs of victims are individually assessed and that the most vulnerable, including victims of all forms of gender-based violence, receive treatment appropriate to their requirements. This Directive must be implemented at national level by 16 November 2015 at the latest.

The proposal for a Regulation on mutual recognition of protection measures in civil matters is still under negotiation between the European Parliament and the Council. It aims to complement the European Protection Order (which applies in criminal matters) adopted in December 2011. These two instruments will ensure that protection measures issued in one Member State can be recognised in another, following a speedy and efficient procedure, to avoid victims losing their protection if they move or travel.

The European Commission has also recently supported several focused activities to end female genital mutilation (IP/13/189).

Source: European Commission, Database on Women and Men in Decision-Making

For more information

IP/13/411

Press Pack:

European Commission – Fundamental rights:

European Commission – Gender equality:

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