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Implementation of the EU Charter of Fundamental Rights

Activities of National Human Rights Institutions



Introduction

The European Charter of Fundamental Rights (the Charter) enshrines in European Union law the fundamental rights of citizens and all individuals under the Members States' jurisdiction, strengthening the protection of fundamental rights in the EU and making them more visible for rights holders.

The Charter applies to EU institutions, but equally to national actors where these are acting within the scope of EU law. However, according to research¹ there is insufficient awareness and implementation of the Charter at national level. Indeed, the day-to-day use of the Charter appears limited in the 28 EU Member States.²

NHRIs work towards the implementation of all international human rights standards at national level, through their broad state mandate to promote and protect human rights. They both form part of, and support, an effective justice system, throughout Europe. They are therefore essential to the implementation of the Charter, as well as to access to justice for individuals throughout Europe.

ENNHRI, the European Network of National Human Rights Institutions, has collected practices from its members to show how NHRIs across Europe are working towards the national implementation of the Charter.

1. 2015 Eurobarometer Survey on Awareness of the Charter
2. See on the chapter "EU Charter of Fundamental Rights and its use by Member States" as regularly included in the "Fundamental Rights Report" published annually by the European Union Agency for Fundamental Rights (FRA)

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Main features of the Charter

The Charter of Fundamental Rights of the European Union (Charter) is a unique and modern human rights instrument which aims to strengthen the protection of fundamental rights in the European Union (EU).

The Charter was adopted in 2000 in Nice and became legally binding upon entry into force of the Lisbon Treaty, in 2009. Being part of the EU, the Charter has supremacy over national law and its provisions may have direct effect in the legal systems at national level.

The Charter brings together all fundamental rights protected in the EU as they result from the established case-law of the Court of Justice of the European Union (CJEU), the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and common constitutional traditions of the Member States.

The Charter

- ✓ Can have direct effect and its provisions can be invoked before national courts
- ✓ Applies to the EU institutions
- ✓ Applies to the EU Member States, when they act within the scope of EU law
- ✓ Covers civil and political, as well as economic, social and cultural rights
- ✓ Includes modern rights, such as: data protection, the right to a good, administration, the freedom to conduct a business and the rights of the elderly

When does the Charter apply at national level?

The Charter applies to the EU institutions and to the Member States when they act within the scope of EU law (Art.51). The EU institutions are bound by the Charter in all contexts, which gives it the potential to promote a stronger human rights culture within the EU. The Charter applies in addition to other international human rights standards or national constitutional guarantees of human rights protection.

Member States **act within the scope** of EU law when:

- applying a provision of EU law (apart from the Charter itself);
- applying national law transposing EU legislation³;
- applying provisions of national procedural law to enforce substantive provisions under EU law⁴;
- applying a provision of national law otherwise intended to implement EU law or pursue its objectives (directly or indirectly)⁵;
- exercising discretion allowed for in a piece of EU legislation⁶; or
- exercising discretion allowed for by derogation clauses in the context of the fundamental freedoms (goods, services, workers and capital), as laid down in the EU Treaties.⁷

Member States **do not act within the scope** of EU law when:

- acting in a field in which the EU holds a competence but has not yet legislated on⁸; or
- acting in the scope of transposing legislation that goes beyond the requirements laid down in EU legislation (higher national standards, 'goldplating').⁹

3. Case C-5/88 Wachauf, EU:C:1989:321

4. Case C-279/09 DEB, EU:C:2010:811

5. Case C-206/13 Siragusa, EU:C:2014:126

6. Joined Cases C-411/10 and C-483/10 N.S. and others, EU:C:2011:865

7. Case C-260/89 ERT, EU:C:1991:254

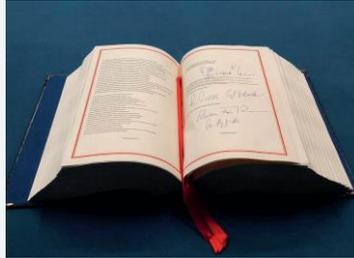
8. Case C-198/13 Hernández and others,

EU:C:2014:2055; Case C-309/96 Annibaldi, EU:C:1997:631

9. Case C-198/13 Hernández and others, EU:C:2014:2055

How do NHRIs use the Charter in their work?

NHRIs use the Charter through their broad state mandates, which include monitoring, advising government and parliament, complaints-handling, legal assistance, reporting human rights education, training, and awareness raising. These functions are mutually reinforcing for the implementation of fundamental rights.



1. Human rights monitoring

Human rights monitoring is a crucial task of NHRIs, through which they gather, verify, and use information to address the human rights situation in their country. Human rights monitoring is carried out to assess whether international human rights standards are met at the national level, through domestic legislation and policy, and their application in practice. A crucial tool for human rights monitoring are indicators, which are identified by NHRIs based on applicable human rights standards.

NHRIs use the Charter in their monitoring activities to assess the compatibility of states' (in)actions with human rights standards. The Charter can be used as a sole applicable standard on which to base a monitoring activity, or together with other human rights instruments. In such cases, the monitoring activity can be used to identify synergies or gaps between the Charter and other regional or international human rights standards, as well as between the EU standards and national legislation. Since the Charter provides stronger protection of certain rights, enshrines new and modern rights, benefits from the effects of EU law (supremacy and direct effect) and is also supported by the CJEU case-law, it can provide a valuable baseline in developing human rights indicators.

Federal Migration Centre (Myria)

In its 2015 annual report on migration, which combines statistics and a legal analysis of human rights compliance, the Belgian NHRI Myria developed a checklist for practitioners, civil servants and judges to assess if the best interest of the child is duly taken into account in their work. The checklist is based on human rights indicators under several legal sources, including the Charter at Article 24 (rights of the child) and Article 47 (right to an effective remedy and to a fair trial), which provides stronger protection in this regard than the European Convention on Human Rights.



Ombudswoman of the Republic of Croatia

During the preparation of its annual report, the Croatian NHRI uses a table of indicators relevant for specific legal areas. The table is composed of different legal instruments, including the Charter, which are used to assess national legislative provisions and the practice of state institutions.

2. Reporting

Through their activities in the area of human rights protection and promotion, NHRIs gain valuable information on the human rights situation in their country. They share this knowledge with national and international bodies, through thematic or regular reports on the state's observance of human rights. Where needed, they also recommend measures for improvement of the human rights situation. NHRIs report to national parliaments as well as to regional and international human rights mechanisms, including UN bodies. Reporting may be a part of regular monitoring activities or result from specific research or case work.

The Charter, as a binding legal instrument, can strengthen NHRIs' analysis and reporting of the human rights situation. NHRIs report on compliance with the Charter, as well as other international human rights standards, when preparing reports submitted to national and regional bodies such as Parliaments, and also the Organization for Security and Cooperation in Europe, the Council of Europe and the EU institutions and agencies (EU Fundamental Rights Agency).

Netherlands Institute for Human Rights

In a recent recommendation on the living conditions in a shelter/camp for migrants¹⁰, the Netherlands NHRI referred to the Charter as one of the instruments protecting the right to non-discrimination.

German Institute for Human Rights

The German NHRI referred to the Charter with regards to the express prohibition of trafficking in its study on "Human Trafficking in Germany: Strengthening Victim's Human Rights". In this context, the reference to the Charter underscores the legal obligations incumbent upon the state.



Northern Ireland Human Rights Commission

The Northern Ireland NHRI has underlined that the Charter can strengthen analysis by reference to rights that are unique to the Charter such as good administration and intellectual property. The Northern Ireland NHRI refers to the Charter in its research reports; for example, its Annual Statement on human rights in Northern Ireland and its guidance for NHRIs in post-conflict areas, 'Disarmament, Demobilisation, and Reintegration: A Guide for National Human Rights Institutions'.¹¹

3. Advisory functions

Under the Paris Principles, NHRIs are responsible for advising their governments, parliaments and all relevant authorities on human rights issues. They make recommendations to national authorities in order to strengthen the promotion and protection of human rights. Within this function, NHRIs review existing laws, policies and practices and, where necessary, they recommend changes or the adoption of new measures to ensure compliance with human rights standards. This function is especially relevant in the context of EU law since EU legislation often leaves a wide margin of appreciation to the national legislator on how to transpose EU Directives.

As the Charter has direct effect, it has the potential to serve as a principal legal standard for NHRIs to advise national authorities on the compliance of existing or draft legislation (in the areas where the state activities or omissions fall in the scope of EU law). NHRIs use the Charter when preparing their policy interventions, assessment and recommendations addressed to national authorities and rely on the Charter to support advocacy for standards recognised by international law. The Charter plays a crucial role when NHRIs exercise their advisory functions, particularly in the transposition of EU Directives, and in areas where the Charter provides stronger protection of certain rights or concerns rights uniquely regulated in the Charter and related case-law.

Ombudsman (Provedor de Justicia)

In 2010 and 2012, the Portuguese NHRI recommended the Parliament to adopt a Code of Good Administrative Behaviour. This initiative was inspired by a similar action of the European Ombudsman and was based on the right to good administration being a fundamental right enshrined in the Charter (Article 41), which aims to protect citizens who enter into relation with public administration.

10. <http://www.mensenrechten.nl/publicaties/detail/36372> (in Dutch)

11. <http://bit.ly/2jxYAKO>

Interfederal Centre for Equal Opportunities (Unia)

The Belgian NHRI relied on the Charter to elaborate a recommendation¹² concerning the organisation and conditions of transport to schools for children with disabilities. The recommendation sets out that the current situation of limited availability of transport for children with disabilities leading to excessive journey times may lead to the violation of various human rights instruments, including the Charter (Article 4, prohibition of torture and inhuman or degrading treatment or punishment; Article 24, the rights of the child). Unia recommended that any balance between budgetary requirements and organizational requirements for transportation should be carried out primarily in the best interests of the child.



4. Complaints handling and litigation

Within their human rights protection mandate, some NHRIs receive and investigate individual complaints alleging violations of human rights. Depending on the mandate, some NHRIs act as quasi-judicial bodies and upon hearing or investigating the complaint, issue binding or non-binding recommendations, as well as decisions. Some NHRIs have standing to represent those complaining of human rights violations before courts; intervene in court proceedings as third parties; challenge laws and practices before constitutional tribunals; or seek amicable settlement of individual cases. In general, NHRIs should be able to refer individuals to competent authorities and inform the complainants of their rights and available remedies.

12. <http://unia.be/fr/legislation-et-recommandations/recommandations-dunia/recommandationconcernant-lorganisation-et-les-conditions-des-transport-s-c> (in French)

In cases falling within the scope of EU law, NHRIs use the Charter alongside national and European legislation and can do so strategically to bring about structural changes, including the setting aside of incompatible national legislation. The example of Austria shows that in some legal systems the Charter is also used for constitutional review so that contradicting norms can be declared null and void before the Constitutional Court. Moreover, raising a legal argument based on the Charter may also open the avenue of sending a request for a preliminary ruling to the CJEU.

Equality and Human Rights Commission

The Great Britain NHRI used the Charter in litigation in *Google vs. Vidal Hall and others* in the Supreme Court [UKSC 2015/0097]. The EHRC applied to intervene in the case. The Charter was relied on to the effect that the right to the protection of personal data is a “right” within the meaning of the Charter and is of direct effect. The NHRI submitted that the Court of Appeal was correct to disapply a provision of the Data Protection Act 1998 which limited the right to claim compensation for distress.

Irish Human Rights and Equality Commission

The Irish NHRI relied on the Charter in the case of *P. v. Chief Superintendent of the Garda National Immigration Bureau & Ors*, in which the Irish NHRI appeared as *amicus curiae* in the proceedings. The case concerned human trafficking, and the Irish NHRI underlined that protection against trafficking is a right under the Charter. It argued that the applicant was entitled to an effective remedy under Article 47 of the Charter, in relation to a refusal of authorities to recognise a victim of human trafficking, as well as undue delay in reaching a decision on this matter. It also stated that the practice of human trafficking may violate human dignity as protected in Article 1 of the Charter. The Irish NHRI argued that Article 11(4) of Directive 2011/36/EU should be interpreted and applied in a manner that is compatible with the Charter. The High Court found that the State’s administrative scheme for the protection of victims of human trafficking was inadequate in terms of the transposition of Directive 2011/36/EU, aimed at combating trafficking in human beings.

Polish Commissioner for Human Rights

The Polish NHRI has been making use of the Charter in relation to rule of law issues. In 2016, it relied on the Charter in its request to the Constitutional Tribunal to declare new amendments to the Constitutional Tribunal Act unconstitutional. The NHRI highlighted several provisions undermining the independence of the judiciary and the rights to an effective remedy and to a fair trial guaranteed by the Article 47 of the Charter. It referred to Article 11 of the Charter in its appeal to the Constitutional Tribunal regarding a new law on the media. The NHRI argued that the Act violated guarantees of freedom of speech and media freedom by granting the government competence to arbitrary appointment and dismiss boards of public media, without any limitation of conditions and with no specific procedure.

5. Human rights education

NHRIs provide human rights education, so that their targeted audience gains knowledge on their rights and remedies in case of violations, and learns about their responsibility for protecting and promoting human rights of others. NHRIs also carry out training for expert audiences, such as state officials, to protect human rights and avoid abuses within their work.

The added-value of the Charter is particularly relevant when NHRIs prepare human rights training for judges, policemen, prosecutors and other law enforcement authorities. NHRIs also include the Charter in trainings for civil society on different human rights mechanisms, and monitoring and reporting. As EU primary law, the Charter can apply directly to these actors and it is therefore essential to promote understanding of its scope of application and content.

Danish Institute for Human Rights

The Danish NHRI held a series of seminars¹³ for lawyers and jurists on different issues regarding the Charter in cooperation with the EU Parliament and Danish Research for European Council. The topics included, inter alia, horizontal effect of the Charter, the relationship between the Charter and ECHR as well as the Charter's principle of equality and equal access to goods and services irrespective of gender, ethnicity and disability.

Ombudswoman of the Republic of Croatia, Finnish Human Rights Centre and Polish Commissioner for Human Rights with EU FRA

In 2019, the Croatian NHRI co-organised two trainings on the Charter in cooperation with the EU Agency for Fundamental Rights (FRA). One training was aimed at civil servants, focusing on policy and applicability of the Charter in legislative procedure. The other one was aimed at NGOs, focusing on how to use the Charter in strategic litigation and how to communicate such cases, notably addressing victims' reparation and women's rights.

The Finnish NHRI co-organised similar trainings with FRA on the use of the Charter nationally, aimed at ministries and ombuds offices at a high level. The particular themes addressed were data protection, privacy and health data. Also in partnership with FRA, the Polish NHRI organised two seminars for professional lawyers and NGOs, respectively. Special attention was given to practical aspects of formulating preliminary references to the CJEU in cases where the Charter might be useful.

6. Awareness raising

NHRIs promote a wide understanding and observance of human rights principles and standards. They increase public awareness, including through education, campaigns, publications, distributing information and materials, and by making use of media, NHRIs organise on different human rights topics.

13. <http://menneskeret.dk/projekter/seminar-series-and-book-on-the-european-charter-of-fundamentalright> (in English)

NHRIs have used various awareness raising tools in order to make the scope and content of the Charter clear, not only for duty bearers, but also for rights holders, who can benefit from the protection and remedies deriving from the Charter. NHRIs promote the Charter through their publications, websites and social media, and participate in projects aimed at raising awareness of rights and remedies available under the Charter. The common denominator of these activities is the goal to make this modern human rights instrument accessible to the public.

Scottish Human Rights Commission

In the context of the UK's referendum on whether to remain in or leave the EU, the Scottish NHRI published a human rights overview¹⁴, which focused on the Charter. The paper, and related information¹⁵, was widely disseminated and underlined the potential impact of a UK exit from the EU on the protection of social rights, or principles, contained in the Charter, such as workers' rights, access to social security, and healthcare. The Scottish NHRI also gave presentations to Parliamentary Committees and Government ministers to mitigate the loss of EU protections.

Slovak National Centre for Human Rights

In June 2016, the Slovak NHRI published a guide concerning human rights topics in the EU. The publication¹⁶ dedicates an individual chapter to the Charter, its scope, application at national level, as well as the Slovak NHRI's use of the Charter and addresses its potential for the work of NHRIs. This publication is available online and is designed for students of law, political science and international relations.

14. <http://www.scottishhumanrights.com/news/commission-publishes-paper-on-human-rights-implications-of-eu-referendum/>
15. <http://www.scottishhumanrights.com/news/protectingour-human-rights-after-the-eu-referendum/>
16. http://www.snslp.sk/CCMS/files/Sprievodca_ludskopravnymi_temami_suvisiacimi_s_clenstvo_m_SR_v_EU.pdf (in Slovak)
17. Principles relating to the Status of National Institutions (The Paris Principles) Adopted by General Assembly resolution 48/134 of 20 December 1993

What are NHRIs?

National Human Rights Institutions (NHRIs) are state mandated bodies, independent of government, with a broad constitutional or legal mandate to promote and protect human rights at national level. NHRIs are periodically accredited by reference to the UN Paris Principles¹⁷ to ensure their independence, pluralism, effectiveness and accountability.

NHRIs address the full range of human rights, including civil, political, economic, social and cultural rights. Their areas of work range from human rights monitoring, research, education and awareness-raising, to investigation, complaints-handling and litigation functions, as well as legislative and policy advice, and reporting to international human rights mechanisms.

NHRIs play a key role in protecting individuals and promoting a culture of rights, as well as identifying and addressing structural and systemic deficiencies in their own countries and of the European system as a whole, thus contributing to national implementation of international human rights treaties ratified by their establishing States.

What is ENNHRI?

ENNHRI, the European Network of National Human Rights Institutions, brings together over 40 NHRIs across Europe to enhance the promotion and protection of human rights in the region. It provides a platform for collaboration and solidarity in addressing human rights challenges and a common voice for NHRIs at the European level.

In collaboration with the EU Agency for Fundamental Rights, ENNHRI has provided a training workshop for NHRIs on national implementation of the Charter. It continues to support its members in working with the Charter and other international human rights instruments.