

# New European Commission Strategy on the Effective Application of the Charter of Fundamental Rights in the EU

## ENNHRI Submission

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### Introduction and Overview

ENNHRI, the European Network of National Human Rights Institutions, welcomes the European Commission's initiative to consult ENNHRI and individual National Human Rights Institutions (NHRIs) from EU Member States on the review of the 2010 Strategy for the effective implementation of the EU Charter of Fundamental Rights ('the Charter').

This ENNHRI submission is based on the insights and experience gained on the implementation of the Charter since ENNHRI's establishment five years ago,<sup>1</sup> and the information collected from ENNHRI's members on the Charter, including through the Commission's consultation on the new Charter Strategy.<sup>2</sup>

The submission revolves around six key recommendations:

1. To place national implementation at the core of the Charter Strategy by increasing the commitment to and ownership of the Charter at EU Member State level through joined-up approaches involving all national actors in the Charter's enforcement chain.
2. To further recognise, build strategic cooperation with and support NHRIs as national guardians of the EU Charter and fundamental rights in EU Member States, in line with unique their legal mandate to promote and protect all human rights at national level.
3. To make the Charter more operational in facilitating change at the national level, including through EU monitoring and publication of country-specific findings, and through further

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<sup>1</sup> ENNHRI, for example, has provided input to the European Commission's annual reporting on the Charter of Fundamental Rights (eg: [EC 2018 Report](#) (p. 20)), FRA's annual reports on fundamental rights (eg.: [FRA 2019 report on Fundamental Rights](#)). ENNHRI has also co-organised with FRA a training on the Charter in 2018. ENNHRI's legal working group gathers legal experts from across the EU's NHRIs which constitutes the networks' focal point for capacity-building and knowledge exchange on the Charter ([here](#)).

<sup>2</sup> Other important sources of information are FRA's consultation of NHRIs in the context of the upcoming FRA study on NHRIs, as well as ENNHRI's report on rule of law in response to the European Commission's call for consultation for its first rule of law monitoring cycle ([here](#)).

EU financial and political support for national actors addressing implementation challenges.

4. To showcase the Charter's added value within and in synergy with the wider human rights frameworks, including through focus on concrete areas of application and emerging fundamental rights challenges, such as COVID-19.
5. To interconnect the Charter Strategy with the EU policies and tools in the area of rule of law and democracy, including the European Commission's rule of law cycle and the upcoming Action Plan on Democracy.
6. To provide better access to information on EU fundamental rights policy and law-making processes for national human rights defenders and their representative organisations, such as ENNHRI.

## 1. Placing National Implementation of the Charter at the Core of the New Commission's Strategy

While the 2010 Charter Strategy focused mostly on the implementation of the Charter at EU level, the focus of the new Charter Strategy needs to shift to the implementation of the Charter at national level. It should better capitalise on the potential of the Charter to make a concrete difference in the enjoyment of fundamental rights for people on the ground. As individuals experience human rights at national and local level, it is difficult for the true potential of the Charter to be realised, felt and seen without a focus on the national level.

The momentum that will be created through the launch of the new Charter Strategy should be used to strengthen the commitment and ownership of and within EU Member States. So far, targeted action by national authorities to promote and implement the EU Charter appears far too limited. Such limited traction of the Charter at national level is also reflected in the results of the 2019 Eurobarometer, indicating that only 1 out of 10 respondents know about the Charter.

On the basis of their mandate to promote and protect human rights, NHRIs can play an important role in further bringing the Charter 'home' in EU Member States (further section 2). Yet, NHRIs in EU Member States also confirm that, in addition to their own limitations, the lack of initiative and awareness concerning the Charter by national policy- and lawmakers is an important hurdle for their effective work on Charter implementation in the domestic context. Accordingly, joined-up approaches to Charter implementation, including the various national actors in the Charter enforcement chain would be important for its effective implementation.

## 2. Towards Strategic Recognition, Cooperation with and Support of NHRIs as National Guardians of the EU Charter and Fundamental Rights

NHRIs are the only independent state actors in EU Member States which have a legal mandate to promote and protect all fundamental rights, including the Charter. They do so through a wide array of functions, including consistent monitoring and reporting, providing advice to government and parliament, assisting individuals' access to justice, as well as through human rights education, training, and awareness raising.<sup>3</sup> These NHRI functions are mutually reinforcing for the implementation of the Charter and fundamental rights.

NHRIs that are internationally accredited as being in compliance with the UN Paris Principles are trusted interlocutors at the UN, and increasingly also across European human rights mechanisms, including those concerning the implementation of the Charter. The 2019 Council Conclusions, for example, recognise that NHRIs are 'crucial actors for the promotion and protection of fundamental rights and in ensuring compliance with the Charter'.

The new Charter Strategy presents a milestone opportunity for further recognition by the EU of NHRIs as national guardians of fundamental rights, to elaborate strategic cooperation with NHRIs on national implementation of the Charter, and to develop tailored EU support for NHRIs to fulfil their mandate to promote and protect fundamental rights at national level.

In this sense, the Council also encouraged the Commission, Member States and the Fundamental Rights Agency to 'further enhance their cooperation with these mechanisms and to support them in their respective mandates, including the implementation and promotion of the Charter.' NHRIs have indicated important needs for support, including from the EU, to further develop their work on implementation of the Charter, including:

- Additional resources, possibly through earmarked EU funding to support NHRIs in the national application of the Charter;
- Further training of staff on the effective use of the Charter (and the Charter's added value compared to other human rights instruments)<sup>4</sup>;

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<sup>3</sup> See further in ENNHRI's publication on the Activities of NHRIs in Implementation of the EU Charter of Fundamental Rights [here](#).

<sup>4</sup> For example, tailored trainings on the Charter's national application for NHRI staff at national level, taking into account mainstreaming of the Charter across an individual NHRIs' work. In addition, further trainings on the Charter at regional level can be developed around core themes of regional interest of NHRIs, such as rule of law. The trainings could benefit from support and expertise of FRA, and could follow a model similar to previous capacity-building on the Charter co-organised by ENNHRI and FRA (eg in 2018).

- More EU information on progress on national implementation of the Charter (eg. through annual Charter report);
- Further development of EU tools and publications to work on implementation of the Charter (including in national language);
- Further sharing of experience with peers in other EU Member States (possibly through ENNHRI).

As a regional network gathering all EU NHRIs,<sup>5</sup> ENNHRI stands ready to further engage with the European Commission on the development of the new Charter Strategy and its implementation. While NHRIs further develop and strengthen their role as guardians of fundamental rights, democracy and rule of law in the EU, a future European Commission Communication on NHRIs could be an important step forwards in further unpacking the potential of NHRIs' role and added value at the EU level and in EU Member States, for the stronger enjoyment of rights on the ground.<sup>6</sup> With the support of the European Commission, ENNHRI will further develop its role in support of NHRIs, to facilitate sharing of reports, experience and good practice on implementation of the Charter and fundamental rights, to develop capacity-building programmes and tools, and to function as focal point for NHRI engagement on the Charter at regional level.

### 3. Further Operationalisation of the Charter for Effecting Change at National Level, including NHRIs

The EU Charter Strategy should launch a consistent monitoring and follow-up process on national implementation of the Charter. The challenges and progress made concerning implementation at country-level should be reported by the EU on an annual basis (for example through the annual Charter report supported by an online database such as EFRIS), and should take account of reports and recommendation of key actors in the Charter's enforcement chain, including NHRIs' annual and thematic human rights reports.<sup>7</sup> Country-specific compilations of key findings of the implementation of the Charter at national level, translated in national language, would be a useful tool in support of further dissemination and implementation of the Charter at national level.

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<sup>5</sup> ENNHRI has members in 25 out of 27 EU Member States. While Malta and Italy do not have an NHRI yet, ENNHRI engages with national authorities to support the establishment of an NHRI in those countries. Further information on ENNHRI's work can be found on ENNHRI's webpages, regarding NHRI establishment in [Malta](#) and in [Italy](#).

<sup>6</sup> Drawing, for example, on the upcoming findings and recommendations of the EU FRA Study on NHRIs, forthcoming in September 2020.

<sup>7</sup> In line with the UN Paris Principles, NHRIs are required to submit an annual report on the state of human rights to national parliament. See further, General Observation 1.11 on annual reports of NHRIs of the Sub-Committee on Accreditation, provided on the website of [UN OHCHR](#)

The Charter Strategy should also envisage financial and political support to engender change on the ground, in line with the outstanding challenges identified in fundamental rights reports. For instance, the EU could consider support for multi-stakeholder consultations at national level, including NHRIs, to develop strategic action in response to implementation challenges. NHRIs have also flagged out that further country-level EU support in implementation of the Charter could include, for example, collections of good practices on Charter implementation, support for in-country trainings, and Charter tools in national language accessible to the wider public.

#### **4. Showcasing the Charter's Specific Added Value Within and in Synergy with the Wider Human Rights Frameworks**

The EU Charter is one of most modern and progressive instruments in the EU's fundamental rights landscape, complementing pre-existing instruments, including the Council of Europe's Convention, the UN human rights treaties as well as national constitutions.

However, the complementarity and added value of the Charter compared to pre-existing and better known instruments needs to be further clarified and understood, not only for the general public (the people whose rights the Charter serves) but also for specialist human rights defenders, including NHRIs.

Accordingly, the Strategy should be developed as a roadmap for concrete action and with a clear time frame that is similar to ongoing EU processes,<sup>8</sup> in partnership with existing fundamental rights actors at international, regional and national level, including NHRIs. The approach to the consultation on the Charter Strategy is already a commendable illustration of such a partnership approach, which should be continued throughout the implementation of the new Strategy.

To clarify and encourage more concrete use of the Charter, it would be helpful for the Charter Strategy to include focus on concrete areas of application and emerging fundamental rights challenges. NHRIs have for example indicated specific added value of the Charter in the area of rule of law (through article 47 of the Charter) or for the rights of older persons. Strategic consideration for the Charter's added value concerning key themes and policy areas, and how the Charter relates to other applicable human rights instruments in those areas, would further facilitate the use of the Charter at national level. Guidance on the added value of the Charter in

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<sup>8</sup> For example, the Charter Strategy could follow the timing of the EU Multi-Annual Financial Framework, which is likely to introduce fundamental rights conditionality for EU funding, and includes a potential role for NHRIs in this respect.

tackling emerging fundamental rights challenges, such as those emerging in the context of the COVID19 pandemic, would also add to the wider recognition of the Charter's added value.

On a longer term, the envisaged accession of the EU to the European Convention of Human Rights would also greatly facilitate the further development of synergies between fundamental rights frameworks in the EU and their effective application on the ground.

## **5. Interconnecting EU Fundamental Rights with Democracy and Rule of Law Policies and Tools**

The development of the new Charter Strategy should be used to further engender synergies and complementarities between the EU's policy instruments and implementation tools concerning its three interconnected foundational values: fundamental rights, democracy and rule of law. At the level of the European Commission, for example, the Charter Strategy should develop a pathway for ensuring inclusion of the Charter and fundamental rights in the ongoing development of the rule of law monitoring cycle, as well as in the future EU Action Plan on Democracy and its implementation. The development of further interinstitutional cooperation at EU level, with proper consideration for the role of the EU Fundamental Rights Agency (FRA), would be also warranted to facilitate more effective implementation at national level.

ENNHRI's submission to the European Commission's first annual rule of law monitoring cycle indeed illustrates how at the level of national realities, the EU foundational values cannot be conceived in isolation from one another.<sup>9</sup> The ENNHRI submission compiles EU NHRIs' reports on the state of the rule of law in their country, based on their human rights monitoring and reporting functions. The report identifies important regional rule of law trends with direct relevance for the enjoyment of fundamental rights and implementation of the Charter at national level. The ENNHRI report, for example indicates region-wide challenges concerning the right to access to justice, or highlights additional challenges for NHRIs' role in the right to good administration and ensuring checks and balances by undertaking human rights impact assessments of draft laws.

## **6. Providing Access to Information on EU Fundamental Rights Policy and Law-making Processes for National Human Rights Defenders, including NHRIs**

The Charter Strategy should create further leverage for opening up EU fundamental rights policy-processes to national human rights defenders and their representative organisations, including NHRIs and ENNHRI. A good practice illustration is the 2019 FREMP meeting on the Charter, in the

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<sup>9</sup> See ENNHRI, 'The rule of law in the European Union- reports from National Human Rights Institutions, [here](#).

context of which ENNHRI was invited to provide an overview of the most important fundamental rights challenges for the attention of Member State representatives.<sup>10</sup> Such direct reports of NHRIs and ENNHRI on fundamental rights to EU institutions should be more consistently facilitated.

More clear and timely information on how fundamental rights impact assessments are undertaken at EU level and their results could benefit national follow-up, including by NHRIs. Such information could also further inform impact assessments NHRIs carry out at national level, including of national instruments which are adopted in implementation of EU obligations. In this vein, EU actors should inform and consult NHRIs early in the process of legislative initiatives that could have major impacts on fundamental rights to facilitate meaningful fundamental rights impact assessments at national level.

Key updates on the Charter and its implementation should be made publicly available in concise and user-friendly factsheets and tools, such as the FRA's *Charterpedia*.

## Conclusion

The new EU Charter Strategy presents a milestone opportunity to further strengthen the implementation of the Charter and fundamental rights across all EU Member States.

In follow-up of this submission, ENNHRI and its members stand ready to further cooperate with the European Commission, and other relevant actors, on the development and implementation of the new EU Charter Strategy, with a view to further strengthen the enforcement of the Charter and enjoyment of fundamental rights for all people throughout the EU.

Brussels, 20 May 2020

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<sup>10</sup> See ENNHRI highlights NHRIs' contributions to realising human rights before Council of the EU, [here](#).