VIRTUAL SEMINAR ON THE ROLE OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION IN THE WORK OF EQUALITY BODIES AND NATIONAL HUMAN RIGHTS INSTITUTIONS
20–22 October 2021

your take-aways

"Whatever we do, whatever path we take going forward [...] the key element of the roadmap must be the Charter of Fundamental Rights."
(FRA Director Michael O’Flaherty in his welcome speech)
Dear participants,

Thank you for spending three, in our opinion, exciting, exhausting, but inspiring and, above all, useful days with us. Special thanks go to our co-organisers Jone Elizondo Urrestarazu from Equinet and Katrien Meuwissen from ENNHRI. Without them this conference would not have been possible.

To ensure that the event that kept us busy these last days and weeks does not evaporate now that it is over, we hereby share some quick but hopefully helpful “take-aways” with references to further readings, links to key documents and pointers to key messages.

May this provide you some assistance in your daily work – a work that is so important for the European fundamental rights landscape and the rights of the people living in the EU.

Do not hesitate to contact us at charter@fra.europa.eu if you have further questions about FRA materials or any ideas to share.

Kind regards,

The FRA Charter Team

**Word Cloud**

*Spontaneous associations of seminar participants at the start of the seminar*
MODULE 1 - The EU Charter of Fundamental Rights and its potential for National Human Rights Institutions and Equality Bodies

OPENING SESSION

Ten years of Charter use by the Court of Justice of the European Union: take-aways for Equality Bodies and National Human Rights Institutions

Michal BOBEK, Advocate General, Court of Justice of the European Union (CJEU)

KEY DOCUMENTS AND LINKS

Scope of Application of the Charter under Article 51(1) Charter:
Opinion of 7 September 2017, Case C-298/16, Teodor Ispas

Charter overlapping with national catalogues of rights:
Opinion of 25 July 2018, Case C-310/16, Spetsializirana prokuratura v Petar Dzivev

(Limits of) Horizontal direct applicability of the Charter:
Judgment of 22 January 2019 and Opinion of 25 July 2018, Case C-193/17, Cresco Investigation GmbH

Rule of Law – the use of the Charter in such cases:
Opinion of 20 May 2021, Joined Cases C-748/19 to C-754/19, Prokuratura Rejonowa w Mińsku Mazowieckim

FURTHER READINGS

The new strategy to strengthen the application of the Charter of Fundamental Rights: Implementation and the role of NHRIs and equality bodies

Nathalie STOCKWELL, Policy Officer - Fundamental Rights Policy, European Commission Directorate-General Justice and Consumers

KEY MESSAGES

★ “The Charter is not just any instrument of EU law. It enshrines the fundamental rights that everyone in the EU should enjoy and recalls the principles on which the European Union is founded: democracy and the rule of law.”

★ “NHRIs and Equality Bodies are key players in promoting and protecting the rights enshrined in the Charter and key partners for EU institutions and for the Member States, including on the Charter compliant disbursement of EU funds.”

KEY DOCUMENTS AND LINKS

| Strategy to strengthen the application of the Charter of Fundamental Rights in the EU | Information on the EU Charter of fundamental rights on the Commission’s Europa website | European e-Justice Portal information on the application of the Charter and where to turn in case rights were breached |

HEADS-UP

The Commission will present a report on the application of the Charter focussing on protecting fundamental rights in the digital age, in December 2021. It will also launch an awareness raising campaign on people’s Charter rights.
The new Citizens, Equality, Rights and Values (CERV) programme - EU funding for capacity building on the Charter and strategic litigation at national level

Johannes BÖRMANN, Programme Manager, European Commission Directorate-General Justice and Consumers

KEY MESSAGES

“With the new Citizens, Equality, Rights and Values programme (CERV), the largest EU funding programme ever to promote fundamental rights inside the EU, we want to support those who make fundamental rights a reality in people’s lives. A new call on Charter capacity building and litigation will open on 28 October 2021. Individual NHRIs and Equality Bodies are encouraged to apply.”

KEY DOCUMENTS AND LINKS

CERV call on capacity building on applying the Charter and on litigation (open from 28 October to 24 February)  
CERV work programme 2021-22  
CERV regulation  
Funding & tender portal where to find the call for proposals
The Charter and its use at national level

Gabriel N. TOGGENBURG, Policy Coordinator – EU Charter of Fundamental Rights, Institutional Cooperation & Networks Unit, EU Agency for Fundamental Rights (FRA)

KEY MESSAGES

★ “Over the last decade we have seen a steady increase of the Charter’s use at national level”.
★ “Access to justice and equality are two areas that are of key relevance when it comes to the Charter. This is confirmed by the figures. Articles 47 and 21 are the Charter provisions most often referred to with Article 47 leading all statistics by far.”
★ “Wherever doubts arise regarding the Charter’s applicability, do not forget to consult FRA’s Charter handbook and other FRA tools.”

KEY DOCUMENTS AND LINKS

- FRA Charterpedia
- FRA Charter resources
- Key Charter related statements issued by the European Parliament and the Council of the EU
- Ten years on: Unlocking the Charter’s full potential

FURTHER READINGS

- Niall Coghlan and Marc Steiert (eds, 2020), The Charter of Fundamental Rights of the European Union. The travaux préparatoires and selected documents, EUI
- “All EU-r rights”, Online series (Charter article-by-Charter article) published by EURAC Research in order to increase awareness in the interested public

HEADS-UP

Note that soon the new edition of our FRA/ECtHR Handbook on children rights will be published. The FRA/ECtHR Handbooks present the case law on the Charter (CJEU) and the ECHR (ECtHR) in various policy areas. New editions on new themes are planned. For already published editions see:

- Handbook on European law relating to asylum, borders and migration - 2020
- Handbook on European data protection law - 2018
- Handbook on European non-discrimination law - 2018
- Handbook on European law relating to access to justice - 2016
SESSION 2: INFORMATION SESSION ON EU FUNDS AND THE POTENTIAL OF THE NEW HORIZONTAL ENABLING CONDITION

The Charter conditionality in the new Common Provisions Regulation: Enabling conditions in the new Common Provisions Regulation

Maëva ROULETTE, Policy Officer, European Commission Directorate-General Employment, Social Affairs, and Inclusion

KEY MESSAGES

★ “All operations supported by the CPR Funds need to comply with applicable EU law and take account of the Charter of Fundamental Rights of the European Union.”
★ “The respect of the Charter of Fundamental Rights is a horizontal principle under the CPR and Member States and the Commission need to ensure respect for fundamental rights and compliance with the Charter of Fundamental Rights of the European Union in the implementation of the Funds.”
★ “The Charter horizontal enabling condition, which is a pre-condition for funding, calls for effective mechanisms and arrangements to be in place to ensure compliance with the Charter at all stages of the preparation and implementation of the CPR programmes.”
★ “The CPR foresees sanctions for the non-compliance with the Charter when implementing CPR Funds.”

KEY DOCUMENTS AND LINKS

Commission notice — Guidance on ensuring the respect for the Charter of Fundamental Rights of the European Union when implementing the European Structural and Investment Funds

Common Provisions Regulation
Selected conditionality experiences of NHRIs/Equality Bodies under the Old financial framework

Tatjana VLAŠIĆ, Deputy Ombudsperson Croatia

KEY MESSAGES

★ “As a part of our work on anti-discrimination ex-ante conditionality we managed to raise awareness of Anti-discrimination act as a part of the training offered to civil servants working on EU funds.”
★ “To be able to do it we need additional expertise and resources.”
★ “We should be careful that the work on enabling conditions does not place NEBs/NHRIs under threat.”

KEY DOCUMENTS AND LINKS

FRA, Strong and effective national human rights institutions, challenges, promising practices and opportunities, Report 2020
ENNHRI, Implementation of the EU Charter of Fundamental Rights Activities of National Human Rights Institutions, Report 2019

Preparatory activities by the European Commission and the FRA: Information session on EU funds and the potential of the new Horizontal Enabling Condition

Femke GREMMELPREZ, Policy Assistant, European Commission Directorate-General Justice and Consumers

KEY MESSAGES

★ “We are developing training material and updating guidance to ensure a coherent implementation of the horizontal enabling condition on the Charter in the disbursement of EU funds.”

KEY DOCUMENTS AND LINKS

Common Provision Regulation
2016 guidance on taking into account the Charter in the disbursement of EU funds
Preparatory activities by the European Commission and the FRA: FRA EU funds project

Robert Jan UHL, Policy Analyst – Fair and Equal Societies, Institutional Cooperation & Networks Unit, EU Agency for Fundamental Rights (FRA)

KEY MESSAGES

★ “Conditionality is a key topic these days and it will stay with us over the years to come.”
★ “FRA is planning a new project on EU funds on the role of national bodies with a human rights remit in ensuring that EU funds are spent in line with the Charter and the CRPD.”
★ “We will be speaking to everyone involved in the EU funds cycle in the coming months to better understand what the issue and the potential are. Based on this we will be able to provide assistance to national bodies next year.”

KEY DOCUMENTS AND LINKS


HEADS-UP

FRA will also be looking at the social rights aspects of the NExtGenerationEU plans by national government, and will include a section on the monitoring of fundamental rights aspects of that fund in the Focus Chapter of next year’s Fundamental Rights Report
“Equality Bodies are at the core of every European country’s equality infrastructure. Equality Bodies, therefore, as Equality watchdogs, play an essential role in ensuring that people can effectively enjoy their right to Equality and non-discrimination under the Charter. Their core mandate, including advice, monitoring and (strategic) litigation, awareness raising, the help given to victims, strategic litigation, or their collaboration with national and regional governments, places them in a key position to further the application of the Charter.”

“While Equality Bodies have considerable potential in this area, it is essential that their independence, mandate, resources, or institutional architecture are secured and reinforced. For that reason, it is essential that they are strengthened by providing Standards binding legislation, in order to also be able to effectively fulfil their role as key allies in the Charter enforcement chain.”

“Because of its very well-developed body of law, the symbiotic relationship between the Equality Directives and the Charter may not always be clear. It is important make sure that the Charter provides an interpretative framework for the Equality Directives and not the other way around, to really see the influence and impact of the Charter in this area of work, that includes the horizontal application of article 21 or the need to not interpret the Directives narrowly.”

“The potential value of the Charter for equality practitioners goes well beyond the title in equality. There are many articles that are cross cutting that may add more layers and help interpret Equality legislation in a far-reaching way.”

**KEY DOCUMENTS AND LINKS**

- FRA, *Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level*
- FRA, *The EU Charter of Fundamental Rights - Use and added value in EU Member States*
- FRA, COE, *Handbook on European non-discrimination law - 2018*
- Charter e-guidance

**FURTHER READINGS**

- The Commission’s EU Strategy to strengthen the application of the Charter in the EU
- EU Council Conclusions (20/09/2019) on the Charter of Fundamental Rights after 10 Years: State of Play and Future Work
- FRA, *Equality in the EU 20 years on from the initial implementation of the equality directives*, 2021
SESSION 1: THE CHARTER APPLIED

The use of the Charter in equality law
Sara IGLESIAS SANCHEZ, Professor, Universidad Complutense de Madrid

KEY MESSAGES

★ “EU Equality law triggers the applicability of the Charter: wherever we have EU equality law, the Charter applies.”
★ “The Charter is a source of interpretation of equality and non-discrimination law, that is often key to determine the scope and content of the protection.”
★ “EU non-discrimination law is a concretisation of the general principle of non-discrimination enshrined in the Charter. Nevertheless, the Charter is an independent instrument of constitutional nature, with regard to which the validity of EU non-discrimination law can and must be assessed.”

KEY DOCUMENTS AND LINKS

CJEU Case Law Digest on Article 20 of the Charter
CJEU Case Law Digest on Article 21 of the Charter

FURTHER READINGS

Working with the Charter daily
Emilie VAN DEN BROECK, Legal and policy officer, Unia, Belgium

KEY MESSAGES

★ “We can invoke the direct horizontal effect of the Charter to rule out the application of a national disposition.”
★ “It is interesting to note that reference to the Charter is often made without any analysis about the existence of a sufficient link with EU law, but merely as a norm of reference.”
★ “Identifying more precisely the gaps in our national legislation that could be filled thanks to the Charter would be a huge step forward.”

KEY DOCUMENTS AND LINKS
Sous la direction de Fabrice Picod, Cecilia Rizcallah et Sébastien Van Drooghenbroeck (2020), Charte des droits fondamentaux de l’Union européenne – Commentaire article par article

FURTHER READINGS
FRA, Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level – Guidance

Achbita case with background information and the ruling of the CJEU
SESSION 2: STRATEGIC LITIGATION

Strategic litigation: Opportunities
Martin MÖRK, former Head of Litigation and Deputy Equality Ombudsman, Sweden

KEY MESSAGES

★ “The case is a vehicle for bringing the right questions to the court – choose the right vehicle and don’t overload it.”
★ “Don’t forget that you are selling an outcome to the courts. It has to be chewable, digestible and preferably palatable.”
★ “Complex arguments will not win favour. The path to justify the desired outcome should ideally appear simple, well-lit and safe to the court.”

KEY DOCUMENTS AND LINKS

Equinet Strategic Litigation Handbook
Braathens case

FURTHER READINGS

FRA, Equality in the EU 20 years on from the initial implementation of the equality directives, 2021
SESSION 1: AN INTRODUCTION TO PREPARING, DELIVERING, AND FOLLOWING UP TRAINING & USING DIGITAL INTERACTIVE TOOLS TO DELIVER A TRAINING ACTIVITY

Sandra AIGNER-ACCARDO, Programme Officer, Technical Assistance & Capacity Building Unit, EU Agency for Fundamental Rights (FRA)

KEY MESSAGES

★ “FRA heard Equality Bodies’ and NHRIs’ call for the EU to concentrate on the provision of training, education and information, as well as the sharing of best practices across national borders.”
★ “National Human Rights Institutions and Equality Bodies are key partners in coordinating capacity building and sharing practice on the Charter among their members. FRA stands ready to assist them act as multipliers and train colleagues in their national institutions.”
★ “FRA is committed to learn with our communities about their needs to achieve that multiplier effect on Charter expertise across Europe. With the new Charter e-learning courses and trainers’ area, FRA provides legal professionals with a comprehensive package of practical material and advice on methodology for the use in training as well as for self-study.”

KEY DOCUMENTS AND LINKS

- FRA e-learning (europa.eu)
- FRA-trainers-manual (europa.eu)
- Analysis of the targeted consultations for the EU’s new Charter strategy

FURTHER READINGS

- Train the Trainer: The Art of Training Delivery
- Kirkpatrick’s Four Levels of Training Evaluation
KEY MESSAGES

★ “Science explains that online meetings drain our energy and that we all suffer from Zoom fatigue.”
★ “In order to engage your audience of professionals, make sure that they get from it at least one of the following:
  ➢ New skills, new info
  ➢ New contacts
  ➢ A good moment
  ➢ Opportunities to advance their mission.”

KEY DOCUMENTS AND LINKS

34 useful free online tools for workshop planning and meeting facilitation
The Flipped Classroom

FURTHER READINGS

Online warm-up and energizers
SESSIONS 2 and 3: WORKING HANDS-ON WITH CHARTER CASE STUDIES & CHARTERPEDIA AND OTHER FRA CHARTER RESOURCES & E-COURSES

Gabriel N. TOGGENBURG, Policy Coordinator – EU Charter of Fundamental Rights Institutional Cooperation & Networks Unit, EU Agency for Fundamental Rights (FRA)

KEY MESSAGES

★ “Charterpedia provides you a wealth of information for each and every Charter provision – use it in your daily legal practice. Make Charterpedia your go-to reference tool!”

★ “If you want to win over your legal audience – use a Case Study. It makes your presentation concrete, relevant and interactive. If you do not have much time to prepare one just use one out of the set of Case Studies FRA has prepared for you.”

★ “Interested in tracking the use of the Charter at national level? Take a look at the Charter chapter in the FRA’s annual Fundamental Rights Report!”

KEY DOCUMENTS AND LINKS

Module 4 – Making use of the Charter to tackle Rule of Law challenges

Presentation of the European Network of National Human Rights Institutions (ENNHRI)
Debbie KOHNER, Secretary General, European Network of National Human Rights Institutions (ENNHRI)

KEY MESSAGES

“ENNHRI is a unique network in Europe that brings together, supports and strengthens all NHRIs that exist across Europe to enhance the promotion and protection of human rights in our region.”

“Strong, independent NHRIs with a broad human rights mandate are ‘multipliers’ of the Charter – NHRIs may contribute to Charter implementation in many ways, ranging from providing advice on fundamental rights compliance of policies and laws, to carrying out independent investigations and public reporting on key fundamental rights issues, and providing training and awareness-raising of state authorities and the wider public on the Charter.”

“Newly launched ENNHRI’s Action Plan on strengthening the application of the Charter of Fundamental Rights in the European Union in 2021-2024 envisages that ENNHRI:

- contributes to the existence of an NHRI in compliance with the Paris Principles in each EU Member State;
- supports the capacity of NHRIs to apply the Charter in their work to promote and protect fundamental rights at national level;
- facilitates NHRI individual and collective contributions to EU actors and processes to strengthen the application of the Charter in the EU;
- unlocks and supports NHRIs’ multiplier potential to strengthen application of the Charter in the EU.”

KEY DOCUMENTS AND LINKS

ENNHRI Action Plan on strengthening the application of the Charter of Fundamental Rights in the European Union (2021-2024)

ENNHRI publication on ‘Implementation of the EU Charter of Fundamental Rights – NHRIs Activities’

ENNHRI 2021 submission to the EU ‘The situation of the rule of law in the EU- Reports from National Human Rights Institutions’

FURTHER READINGS

ENNHRI Democracy & Rule of Law webpage

The Commission’s EU Strategy to strengthen the application of the Charter in the EU

EU Council Conclusions (20/09/2019)
Presentation of key Rule of Law challenges based on NHRI reports - ENNHRI common reporting on ROL

Katrien MEUWISSEN, Senior Human Rights Officer, European Network of National Human Rights Institutions (ENNHRI)

KEY MESSAGES

“Rule of law and human rights are interlinked and mutually reinforcing principles: a strong regime of rule of law is vital to the protection of human rights, and the rule of law can only be fully realised in an environment that protects human rights.”

“As independent state bodies with a broad human rights mandate, national human rights institutions (NHRIs) are a key player in the protection and promotion of fundamental rights, democracy and the rule of law in the EU. Addressing rule of law is a priority for European NHRIs and ENNHRI; we undertake annual common reporting on the situation of rule of law across the EU, for information of regional actors, and with a view to support concrete change at national level.”

“Negative trends identified in ENNHRI’s 2020 rule of law reporting were further exacerbated over the past year, partly due to challenges brought by the COVID-19 pandemic. With the aim to tackle the persistent and aggravating rule of law challenges across the EU, we need to further develop strategic approaches and provide support to national human rights institutions facing such challenges in their countries, including through operationalising the potential of the Charter of Fundamental Rights for addressing rule of law challenges.”

KEY DOCUMENTS AND LINKS

- ENNHRI 2019 submission on the role of NHRIs as partners in the EU’s Rule of Law Framework
- ENNHRI 2021 submission to the EU ‘The situation of the rule of law in the EU - Reports from National Human Rights Institutions’
- ENNHRI Action Plan on strengthening the application of the Charter of Fundamental Rights in the European Union (2021-2024)

FURTHER READINGS

Meijers Committee, Promoting and safeguarding media pluralism through EU law, 2021
Best practice in using the EU Charter and CJEU case law for addressing ROL challenges
Laurent PECH, Professor of European Law, Middlesex University

KEY MESSAGES

★ “Article 19 TEU, which gives concrete expression to the value of the rule of law stated in Article 2 TEU, entrusts the responsibility for ensuring judicial review in the EU legal order not only to the Court of Justice but also to national courts and tribunals.”

★ “The principle of the effective judicial protection of individuals’ rights under EU law, referred to in the second subparagraph of Article 19(1) TEU, is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and which is now reaffirmed by Article 47 of the Charter.”

★ “While the content of Article 19(1) TEU is informed by Article 47 of the Charter when it comes for instance to interpreting the principle of effective legal protection, Article 19(1) TEU can be applied independently from Article 47 of the Charter to review the compatibility of national law with EU law irrespective of whether the Member States are implementing Union law, within the meaning of Article 51(1) of the Charter.”

KEY DOCUMENTS AND LINKS

Joined Cases C-585/18, C-624/18 and C-625/18, AK
Case C-619/18, Commission v. Poland (Independence of the Supreme Court)
Case C-791/19, Commission v. Poland (Disciplinary Regime for Judges)

FURTHER READINGS

Respect for the Rule of Law in the Case Law of the European Court of Justice: A Casebook Overview of Key Judgments since the Portuguese Judges Case
The Commission’s Rule of Law toolbox
Florian Geyer, Head of Unit Justice Policy and Rule of Law, European Commission
Directorate-General Justice and Consumers

KEY MESSAGES

★ “The EU has a number of tools at its disposal to ensure the respect of the rule of law in all Member States. Each tool is tailored to the specific situation at hand, and aims at promoting, preventing or responding to rule of law issues.”

★ “The Rule of Law Report is designed as a yearly cycle to promote the rule of law and to prevent problems from emerging or deepening and to address them, looking at all Member States equally. Developments concerning NHRIs are covered under the fourth pillar on checks and balances.”

★ “NHRIs can play an important role in supporting the Commission’s toolbox – by providing input to the annual Rule of Law Report, by promoting a debate on the rule of law at national level and by playing their role in the institutional checks and balances, to protect fundamental rights and the rule of law.”

KEY DOCUMENTS AND LINKS

Commission’s 2021 Rule of Law Report  Factsheet on the Rule of Law Toolbox  Conditionality Regulation

FURTHER READINGS

State of the Union Speech 2021  Methodology for the Rule of Law Report  Commission website on Rule of Law
The essence of rights under the EU Charter, including the right to an effective remedy under article 47 of the EU Charter - the Irish experience

Michael O’NEILL, Head of Legal, Irish Human Rights and Equality Commission

KEY MESSAGES

★ “The requirement of judicial independence forms part of the essence of the fundamental right to a fair trial, a right which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded.”

★ “The important issue of the intersection between Member States’ obligations under the Charter (Arts 47 and 52(1)) and their entitlement to national procedural autonomy. The CJEU stresses out that “any national law or practice that impairs the effectiveness of EU law by withholding the power to disregard contrary national law is incompatible with the requirements which are the very essence of EU law” (Case C-378/17).”

★ “The impact of reading Article 47 of the Charter in tandem with Article 19(1) TEU - Article 19 TEU applies much more broadly to courts and procedures that function “in the fields covered by Union law” therefore creates a potential launching pad for a greater impact for the Charter within the national system.”

KEY DOCUMENTS AND LINKS

CJEU’s Factsheet on the field of application of the Charter

CJEU’s Judgment from 25 July 2018 in the case C-216/18 PPU.

FURTHER READINGS

FRA’s Charterpedia
The right to an independent court in cases concerning disciplinary proceedings against judges – the Polish experience

Mirosław WROBLEWSKI, Office of the Polish Commissioner for Human Rights

KEY MESSAGES

★ Under the second subparagraph of Article 19(1) TEU, every Member State must thus in particular ensure that the bodies which, as ‘courts or tribunals’ within the meaning of EU law, come within its judicial system in the fields covered by EU law and which, therefore, are liable to rule, in that capacity, on the application or interpretation of EU law, meet the requirements of effective judicial protection: Case C-791/19 (EC v. Poland)

★ Since the second subparagraph of Article 19(1) TEU requires all Member States to provide remedies sufficient to ensure effective judicial protection in the fields covered by EU law, within the meaning in particular of Article 47 of the Charter, that latter provision must be duly taken into consideration for the purpose of interpreting the second subparagraph of Article 19(1) TEU: Case Repubblika, C-896/19

★ As regards specifically the rules governing the disciplinary regime applicable to judges, the requirement of independence derived from EU law, and, in particular, from the second subparagraph of Article 19(1) TEU, means that, in accordance with settled case-law, that regime must provide the necessary guarantees in order to prevent any risk of its being used as a system of political control of the content of judicial decisions: Case C-791/19 (EC v. Poland)

KEY DOCUMENTS AND LINKS

| C-791/19 - Commission v Poland (Régime disciplinaire des juges) | L. Pech, Protecting Polish judges from Poland’s Disciplinary “Star Chamber”: Commission v Poland, Case C-791/19 R, Order of the Court (Grand Chamber) of 8 April 2020 | Oral grounds for the judgment of the Constitutional Tribunal (Poland) in the case K 3/21 |

FURTHER READINGS

Current debates on EU rule of law and links with the EU Charter, including civil and political rights, media freedom & LGBTI under the EU Charter

John MORIJN, Netherlands Institute for Human Rights

KEY MESSAGES

★ “The real meaning and contents of EU citizens’ right to vote for EP and municipal elections is intrinsically connected to media pluralism in Member States. Without free media, there will not be a free and fair vote. As national media pluralism therefore has a direct bearing on EU-level democracy, the active right to vote as laid down in the treaty provisions and as further strengthened and substantiated by the Charter could/should form a legal basis for EU institutions to (more) effectively step in to act again Member States measures putting pressure on media pluralism and media freedom. This would be a pretty conventional intervention, based on decades old principles such as effet utile.”

★ “The rule of law, the Charter and EU funds are legally connected in various different ways. There is no reason to focus only on EU COVID fund disbursement and the rule of law conditionality regulation when it comes to blocking funding to Member States that do not meet Charter-requirements relating to the rule of law. Already existing sectoral EU budgetary tools contain a general Charter clause compliance which forms a condition for lawful disbursement of regular EU funding in instruments some problematic Member States do not even contest. The Commission should be encouraged, as it already did for LGBTI-free zones in Poland, to use this clause to its full potential in parallel to the rule of law conditionality regulation, i.e. with regard to all Charter aspects of the rule of law, including judicial independence, media freedom as well as non-discrimination issues, such as LGBTI. The advantage of this route is that it does not require QMV-approval in the Council.”

KEY DOCUMENTS AND LINKS

Adam Bodnar, John Morijn, How Europe can protect independent media in Poland and Hungary, May 2021, Politico

Kim Lane Scheppele, Daniel Kelemen, John Morijn, “The European Commission has to cut funding to Hungary – The Legal Case”, July 2021

The Good Lobby Profs, “6 reasons why the EU should use the approval of National Recovery and Resilience Plans to enforce the rule of law in Hungary and Poland”, August 2021
“We have had three fascinating days of discussing the Charter and its practical application. We are witnessing a ‘moment of opportunity’ to better implement the Charter – a document with great potential. Yet, we heard from John Morijn that the word ‘potential’ is the wrong framing as there is no choice of whether or not to use it. Applying the Charter is a legal obligation. This seminar was all about how we can apply the Charter in very practical terms.”

“The FRA’s will assist NHRIs and Equality Bodies in four different ways to help them fulfil their important role in making the Charter a national reality:

1. FRA will lower the language barrier by translating its existing Charter online learning tools and training materials and make them gradually available in more and more languages.
2. On a case-by-case basis, FRA will provide training itself, but to enhance the availability of Charter training across the EU, FRA will undertake a mapping of Charter experts in all EU Member States in 2022 and make that pool of potential Charter trainers available to any interested partner.
3. FRA will develop practical guidance on how NHRIs and Equality Bodies could engage in the monitoring of the new conditionalities of EU funds effectively – based on tested practices and in consultation with the bodies themselves. It is key that NHRIs and Equality Bodies are not used as a fig leaf in this important context.
4. FRA will not waver from its commitment to insist on safeguarding the independence of the institutions, establishing Paris Principles compliant institutions throughout the Union, and strengthening mandates of existing bodies where needed.”