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Outcome of the 12 November 2019 Charter conference

“Making the EU Charter of Fundamental Rights a reality for all”

On 12 November 2019, the European Commission, the Finnish Presidency of the Council of the EU and the EU Agency for Fundamental Rights (FRA) hosted a [conference](#) marking the 10th anniversary of the Charter becoming legally binding.

The conference focused on the application of the Charter at national level and brought together key actors in the Charter’s enforcement chain: national and EU policymakers, legislators, administrations, law enforcement bodies, judges, legal practitioners, civil society organisations active in the area of fundamental rights and rights defenders such as National Human Rights Institutions, Equality Bodies and Ombuds institutions. Participants identified avenues to improve use and awareness of the Charter and make it more effective in people’s lives.

The debate was informed by [discussion papers](#), a [paper](#) on “The EU Charter of Fundamental Rights on its 10th anniversary: views of civil society and national human rights institutions” and the results of a [Special Eurobarometer survey on Charter awareness](#). It followed the [Commission’s report](#) on the application of the Charter and [Conclusions on the Charter](#) adopted by the Council on 7 October 2019.

Participants exchanged views on the importance of the Charter delivering for everyone. The discussions showed that the Charter is most effective, with a real impact on people’s lives, when the entire enforcement chain applies it. A key message was that more efforts are needed to ensure that the Charter is used to its full potential.

Representatives of the three co-organising bodies opened the conference: European Commission, Finnish Presidency of the Council of the EU and the FRA.

Commissioner for Justice, Consumers and Gender Equality, Věra **Jourová**, stated: *“We have been and we will continue working towards a culture of fundamental rights in the EU. All the actors in the Charter's enforcement chain have a role to play in making it truly effective in people's lives. The conference is a timely occasion to feed into the Commission's reflections ahead of a new Charter Strategy.”*

Anna-Maja **Henriksson**, Minister of Justice of Finland, said: *“National authorities play an important role in ensuring that the rights enshrined in the Charter become a reality in people's lives. We need to think of the state apparatus as a whole, encompassing the legislative and administrative branches as well as the national courts. The recent Council Conclusions on the Charter, adopted at the JHA Council in October, provide an important tool for enhancing the implementation of the Charter both at the Council level and in the Member States.”*

Michael **O'Flaherty**, Director of the European Union Agency for Fundamental Rights, added: *“The Charter is driving change and helping improve the lives of people across Europe. But as FRA's findings repeatedly show, we still have a long way to go. We have a duty to bring the rights enshrined in the Charter to life, to make them a reality for everyone – for the public at large, for Roma and Jewish communities, for newly-arrived migrants and for LGBTI people.”*

The discussions were organised in plenary around two thematic sessions. The first session aimed to identify avenues to promote a culture of fundamental rights and enhance use and awareness of the Charter by national courts, legislators, administration and law enforcement bodies. The second session looked at the role of civil society organisations and rights defenders such as National Human Rights Institutions, Equality Bodies and Ombuds Institutions in ensuring that the Charter delivers for everyone. A cross cutting theme was how governments can best cooperate with civil society organisations and rights defenders to foster the promotion and protection of the rights enshrined in the Charter. In the closing session, participants looked ahead at challenges and opportunities for a better application of the rights enshrined in the Charter.

Towards a culture of fundamental rights at national level

The discussion highlighted the fact that the Charter is still not sufficiently used at national level and that there are few government policies that proactively promote Charter awareness and application among the various actors in the Charter's enforcement chain.

In a first panel participants looked at how national legislators, national public administrations, including local authorities, and law enforcement bodies use the Charter in their daily work. They identified ways to encourage them to use it more often.

Discussants gave examples of the challenges they encounter in using the Charter, which are usually linked to low awareness and the uncertainty about whether it applies in particular situations, in light of its Article 51. Calls were made for targeted guidance and training opportunities, tailored to the needs of the users, to help them understand when the Charter applies and how it can add value.

Participants welcomed the fact that financing for training and capacity building is foreseen under the post 2020 Citizens, Equality, Rights and Values programme and the Justice programme, including for legal practitioners and administrations. Calls were made for more training opportunities also at national level.

Participants shared some existing national good practices where the government actively encourages the use of the Charter in shaping policies and monitoring legislation.

In Finland, for example, the Constitutional Law Committee of the Parliament issues statements on bills and their compliance with human and fundamental rights instruments, including the Charter. In the Netherlands, regular training is organised for civil servants on the Charter and its practical application, whilst a guide addressed to legislators and policy makers includes guidance on checking Charter compliance. Examples of police training by civil society organisations on hate speech were also highlighted as best practice. The general national human rights action plans in Finland, Germany, the Netherlands, Slovakia and Sweden explicitly refer to the Charter.

The discussion showed the relevance of exchanging best practices on initiatives in the Member States to promote the use and awareness of the Charter. References were made to the Council Conclusions on the application of the Charter of 7 October 2019, calling for an annual discussion on the application of the Charter at national level in the Council working party responsible for fundamental rights (FREMP) and for a dedicated page on the European e-justice Portal for Member States to publish and update their best practices.

The discussion also underlined the role played by civil society and rights defenders in assisting the authorities in the application of the Charter. Examples were given of how civil society and rights defenders can work hand in hand with governments for a better application of the Charter, including through action plans developed together by governments and civil society actors to protect and promote fundamental rights (e.g. in Bulgaria and Ireland).

Several participants underlined that such cooperation could be particularly useful in operations supported by EU funds.

Participants also discussed how cities can embed fundamental rights in their initiatives. A call was made to empower cities and local governments to be actors in the promotion of fundamental rights at national and European level. This included a suggestion for the creation of a light accreditation of human rights cities that could eventually become an internationally respected “label”.

A second panel looked at the role the Charter plays in the dialogue between the national courts and the Court of Justice of the EU (the Court of Justice). The Charter has given the constitutional courts a new voice in the interpretation of EU law. Discussions showed that some of the courts focus more on protecting their national constitutional identity, whilst others engage in a cooperative dialogue with the Court of Justice, contributing to the development of a common constitutional tradition in Europe. In particular, the concept of the “essence” of fundamental rights, as developed in the case law of the Court of Justice and the national courts, was seen as potentially reconciling the imperatives of European integration, based on the core values of the Union, with “the respect for diversity of the

cultures of the peoples of Europe and the national identities of the Member States“, as set out in the Preamble of the Charter.

It was also argued that the Charter serves to protect not only EU values but also the constitutional values of Member States under threat. A number of participants praised the pluralistic vision of the protection of fundamental rights in the Court of Justice’s case law, which also contributes to protecting our fragile democratic societies.

The discussion provided several examples where courts used the Charter in their reasoning, or where the applicants successfully relied on it, e.g. in case of the right to vote of the person partially incapacitated. It moreover illustrated that the Charter has also an inspirational role and is used by national judges to “rethink” and expand national rights.

Participants discussed how to address the challenges arising from Article 51 of the Charter taking into account the expanding body of EU law and the jurisprudence of the Court of Justice. The point was made that this provision should in no way discourage courts from referring preliminary questions to the Court of Justice and from effectively applying the Charter. It was underlined, with reference to the concomitance between Charter rights and ECHR rights as laid down in Article 52(3) of the Charter, that the coexistence of different instruments protecting fundamental rights should rather be perceived as an opportunity for lawyers and judges to get the best possible end-result for the people. This requires proficiency and training.

In this context, it was pointed out that national judges and other legal practitioners need more information and training about the Charter and targeted guidance tools, including on the relevant case law of the Court of Justice. The best use should be made of existing opportunities under the Justice programme or coordinated by the European Judicial Training Network, and future possibilities under the upcoming Citizens, Equality, Rights and Values programme and the Justice programme. Participants also underlined the relevance of the Court of Justice recommendations to national courts on preliminary rulings and the factsheets it produces on case law.

The role of civil society organisations and rights defenders in ensuring that the Charter delivers for everyone

The discussion focused on the key role civil society organisations and rights defenders play in making the Charter a reality for all. Participants exchanged ideas and examples of best practice on how to ensure that citizens are aware of their Charter rights and of the mechanisms at their disposal in case of violations of their rights, including legal aid schemes. The added value of the Charter, especially in countries where the effective judicial protection is at risk or where the effectiveness of the national (judicial) systems is compromised, was also underlined.

A first panel focused on the potential of strategic litigation using the Charter and EU law and its cross-border impact. The discussion underlined the central role of strategic litigation in ensuring access to justice for all, and in protecting the civic space, in particular where it is under threat. A number of participants referred to the importance of litigation to challenge legislation at national level and to promote decision-making driven by the respect of fundamental rights, in an *ex-ante* rather than *ex-post* perspective.

Several speakers intervened with stories of successful litigation and underlined the long-term impact not only for the victims in the specific case, but for the broad groups or communities to which they belong and society as a whole.

Participants referred to cases relating to privacy and data protection rights, non-discrimination, asylum seekers rights, and to the European Arrest Warrant. The need for cross-sectoral exchanges of knowledge was also underlined.

Participants generally agreed that handling cases with a strong legal component based on EU law requires a high standard of legal expertise as the quality of submissions is a crucial factor to ensure success.

It was also underlined that a strategic approach is needed to increase the chance of success with litigation. This includes communication, advocacy, support to the victims and close cooperation with a number of stakeholders in all the phases of the case. Ex post, it also means close follow-up of the repercussions of the decision in the national judgments.

A clear call was made for more opportunities for practitioners to exchange best practices and receive training, not only of a legal nature but also in communication. It was proposed to set up a platform for the exchange of knowledge and allow connections between civil society organisations and lawyers or experts.

Some participants referred to the Commission's implementation of a preparatory action to support strategic litigation and to the future EU programmes in the fields of rights, values and justice. It was underlined that sufficient and sustainable funding to civil society organisations and relevant actors is vital to allow them to perform their activity.

The second panel discussion showed how civil society organisations and rights defenders can help citizens, in particular those more vulnerable, know about their rights and where to turn to if these are violated. The experience in some Member States points to the need to develop communication strategies targeted to the different audiences. The role of the National Human Rights Institutions, Equality Bodies and Ombuds institutions, and their networks was underlined as they are the reference point for both citizens and civil society organisations when they need to obtain information and advice.

It was also underlined that to effectively carry out this task and promote a culture of fundamental rights, organisations working on the ground in the Member States should be trained on the Charter and its scope of application. Networks such as the European Network of National Human Rights Institutions and Equinet have a role to play to train trainers amongst their members and ensure a high level of Charter proficiency.

The discussion also focused on existing tools such as Charterpedia, the European e-justice portal and the European Union Fundamental Rights Information System, that were presented on the day. Participants suggested several ideas on how to use these tools more efficiently. Discussions underlined the need to keep the handbooks and the on-line material up to date and ensure easy access as well as translating them to reach the broadest possible audience.

Participants shared best practices of cooperation with the national authorities, which show that there is an increasing appetite from civil servants to learn about the Charter and how they can use it as a compass when developing policies and legislation.

A look at the future

In the closing session, President Lenaerts illustrated how the Court of Justice interpreted the scope of application of the Charter. He showed that the Charter does not rule out diversity but that a higher national level of protection may be applied where EU law does not provide for a uniform level of protection. He also addressed the horizontal application of fundamental rights pointing to the fact that various Charter provisions may have horizontal effect and that the Court has so far confirmed that the right to non-discrimination, the right to paid annual leave and the right to effective judicial protection enjoy direct horizontal effect. The President of the Court also touched on the relationship between fundamental rights and the rule of law stressing that “fundamental rights are part and parcel of the rule of law within the EU, which the Court of Justice firmly upholds”.

The three final panellists, Mr Juan Fernando López Aguilar, Ms Emily O’Reilly and Mr Miguel Poiaras Maduro drew on the day’s discussions and looked ahead to the next decade of the Charter. The role of the European Parliament was underlined as well as the role of the European Ombudsman in holding EU institutions accountable. The case was also made for a “third life” of the Charter and its potential application in private ‘vertical’ relations, such as between an individual and private forms of governance in the sports or digital sector for example.

Key outcome:

For the Member States:

The outcome of the conference should feed the reflection:

- on raising awareness and promoting the use of the Charter by developing targeted tools and training tailored to the needs of national legislators, judges and other legal practitioners, the administration and law enforcement bodies.
- on ensuring sufficient funding for civil society organisations and rights defenders to enable them to operate efficiently and independently in their various activities, including litigation.

For the judiciary:

The outcome of the conference should feed the reflection:

- on how to improve their Charter proficiency, engage in horizontal (between courts at national level) and vertical (national courts and the Court of Justice) judicial dialogue and exchange the experiences made with the Charter.

- on how to make best use of existing training programmes financed under the Justice programme or coordinated by the European Judicial Training Network, and the new possibilities that will be offered under the upcoming Citizens, Equality, Rights and Values programme and the Justice programme post 2020. They should provide feedback on this training so that the programmes can be further improved.

For the Commission:

The outcome of the conference should feed the reflection:

- on a revision of the 2010 strategy for the effective implementation of the Charter by the EU.
- on how to improve the mainstreaming of the Charter in all its initiatives and the monitoring of the application of the Charter by Member States when implementing EU law.
- on how to better use the EU Agency for Fundamental Rights' findings as a source to inform its actions.
- on awareness raising activities on the rights enshrined in the Charter.
- on improving the European e-Justice Portal, in particular with a new page where Member States can record and update their best practices on Charter use and awareness, so that they can be shared amongst all Member States.
- on helping the actors in the Charter's enforcement chain use the Charter to its full potential. It is currently implementing the preparatory action requested by the European Parliament to raise awareness and develop the capacity of civil society organisations. It also proposed new opportunities to promote Charter awareness and capacity building under the future Citizens, Equality, Rights and Values programme and the Justice programme.

For civil society and rights defenders:

The outcome of the conference should feed the reflection:

- on how to raise awareness on the Charter amongst their staff to enhance the use of the Charter. Training modules developed by the EU Agency for Fundamental Rights and funding available at EU and national level, in particular to "train the trainers", can be harnessed for this purpose.
- on how to best inform people about their rights and assist them in having them upheld.
- on how to best use their potential as multipliers to share relevant Charter knowledge.