

eu2012.dk

DANISH PRESIDENCY  
OF THE COUNCIL OF THE  
EUROPEAN UNION 2012



# Bringing the Charter to life – opportunities and challenges of putting the EU Charter of Fundamental Rights into practice

## COPENHAGEN SEMINAR REPORT

Danish Presidency of the Council of the EU and  
EU Agency for Fundamental Rights

15–16 March 2012

## Contents

INTRODUCTION.....	3
1 PUTTING THE CHARTER INTO PRACTICE AT EU LEVEL.....	5
1.1 Accessibility: the post-Lisbon situation remains complex .....	5
1.1.1 Different fundamental rights sources .....	5
1.1.2 Scope of Charter application .....	6
1.1.3 Information and access to redress mechanisms .....	8
1.2 Visibility: The extent to which the EU institutions are embracing the Charter is not always sufficiently transparent .....	9
1.2.1 CJEU judgments .....	9
1.2.2 Implementing the Charter in legislative and policy action at EU level .....	10
2 APPLYING THE CHARTER AT THE NATIONAL LEVEL .....	12
2.1 Closer integration of all bodies concerned with fundamental rights promotion and/or protection operating at the national level .....	12
2.2 Making the Charter a point of reference in public discourse and frontline action.....	12
2.3 The Charter in litigation.....	13
CONCLUDING REMARKS AND THE WAY FORWARD .....	13
SEMINAR PROGRAMME.....	15

## Introduction

A joint seminar organised by the Danish Presidency of the Council of the European Union (EU) and the European Union Agency for Fundamental Rights (FRA) explored the opportunities and challenges of interpreting and implementing the Charter of Fundamental Rights of the EU (hereafter the Charter).

Putting the Charter into practice is an intricate task, given the complex institutional and constitutional landscape in which it has to operate. It is therefore important that all public administrations with a role to play in the Charter's implementation are involved.

The Danish Presidency took an important step by organising this seminar on 'Bringing the Charter to life – opportunities and challenges of putting the EU Charter of Fundamental Rights into practice' in cooperation with the FRA. The seminar took place on 15–16 March in Copenhagen and involved over 100 participants from EU institutions, national authorities and bodies, independent institutions and civil society organisations, to explore future courses of action. Several keynote speakers introduced the seminar: Morten Bødskov (Danish Minister of Justice and Chairman of the Justice and Home Affairs Council), Ilze Brands Kehris (Chairperson of the FRA Management Board) and Morten Kjaerum (Director of the FRA). Viviane Reding (Vice-President of the European Commission) sent a video message.

The seminar examined the challenges involved in putting the Charter into practice at the EU and national levels, and ways of improving citizens' access to Charter rights. This included panel debates that discussed: the challenges for EU and national institutions and bodies in putting the Charter into practice; the contribution of European and national human rights institutions and the mechanisms they use to improve citizens' access to rights under the Charter; and what non-governmental organisations can do towards the same aim, including the perspectives of civil society and national human rights institutions, and the mechanisms they use.

With the entry into force of the Lisbon Treaty in December 2009, the Charter acquired legally binding status. Henceforth, both EU institutions and Member States are legally obliged to "respect the rights", "observe the principles" and "promote the application" of this instrument, whenever they implement Union law or otherwise act within the scope of EU law. The responsibility for putting the Charter into practice is thus a shared one, with the ultimate goal of making the Charter as accessible as possible to EU citizens.

To fulfil this obligation, it is critical to explore ways for better practical implementation of the Charter, involving all duty bearers, civil society and the public. Especially in times of economic crisis, the crucial relevance of fundamental rights and their indivisibility must be upheld.

The Charter is novel and progressive in many respects. It offers opportunities for enhanced rights protection in Europe, which ought to be acted upon: It is the first human rights bill that is directly binding on an international organisation; it goes beyond the European Convention on Human Rights (ECHR), and many other international human rights instruments, by expressly spelling out the right to human dignity or the right to asylum, for example; it combines civil and political rights with economic and social rights; it can rely on a judicial enforcement mechanism, including preliminary and infringement procedures, and is also likely to greatly benefit from the unique Union law doctrines of direct effect, primacy and Member State liability. It therefore lays a basis for effectively protecting fundamental rights in Europe.

This report aims to highlight the main points from the seminar. The full programme together with the introductions of all the speakers and the list of participants is annexed to this report. The keynote speeches are available on the FRA website.<sup>1</sup> The text boxes highlight key elements of the discussions which include suggestions for future actions and references to FRA activities. This report focuses on EU and national opportunities and challenges, and the work of law and policy makers, complaints mechanisms, specialised human rights bodies and civil society organisations.

---

<sup>1</sup> [http://fra.europa.eu/fraWebsite/news\\_and\\_events/infocus12\\_150312\\_en.htm](http://fra.europa.eu/fraWebsite/news_and_events/infocus12_150312_en.htm).

# 1 Putting the Charter into practice at EU level

## 1.1 Accessibility: the post-Lisbon situation remains complex

### 1.1.1 Different fundamental rights sources

The Charter's entry into force adds a third legal source on fundamental rights, an addition which may need to be clarified and communicated. According to Article 6 of the Treaty on European Union (TEU), the three sources of fundamental rights law are: the Charter, the general principles of EU law, as established by the Court of Justice of the European Union (CJEU), and the European Convention on Human Rights (ECHR).

According to its preamble, the Charter reaffirms, with due regard to the EU's limited competence, the rights as they result from the constitutional traditions and international obligations common to the Member States, the EU Treaties, the ECHR, the Social Charters adopted by the Community and the Council of Europe, and the case law of the CJEU and the European Court of Human Rights (ECtHR). Rights in the Charter that correspond to rights guaranteed by the ECHR have the same meaning and scope (Article 52 (3) of the Charter). This does not, however, prevent EU law from granting more extensive protection.

Where the Charter rights are based on the EU Treaties – the Treaty on the Functioning of the European Union (TFEU) and the TEU –, they shall be exercised under the conditions, and within the limits, defined by those Treaties (Article 52 (2) of the Charter).

The Charter brings clarity and accessibility by presenting the rights in one legally binding document. It does not, however, specify how rights should be protected and leaves a variety of different sources from which fundamental rights flow.

Providing accessible and consolidated information on each Charter right, including the content resulting from other sources, as listed in Article 6 TEU and in the Charter itself, is therefore a necessary task.

The FRA refers to the relevant Charter provisions in its work including thematic reports, opinions and work with stakeholders. In addition, the agency raises awareness about the Charter, for instance, through its *Charterpedia*, a user-friendly online tool<sup>2</sup> that compiles international, EU and national constitutional law in the area of fundamental rights, linked to the titles and articles of the Charter. It is also developing a Charter application for mobile devices, which links the Charter to other fundamental rights sources. The FRA is convinced

<sup>2</sup> Available at: [http://fra.europa.eu/fraWebsite/research/charterpedia/charterpedia\\_en.htm](http://fra.europa.eu/fraWebsite/research/charterpedia/charterpedia_en.htm). On 26 June 2012, the General Affairs Council Conclusions on the 2011 report from the Commission on the Application of the EU Charter of Fundamental Rights, referred to the awareness-raising role of the FRA (see 3180<sup>th</sup> General Affairs Council meeting, Luxembourg, 26 June 2012, paragraph 10, available at: [www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/jha/131230.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/131230.pdf)).

that it will be important to further develop this, and similar tools, in accordance with users' evolving needs.

The FRA has also produced a *Handbook on European non-discrimination law*,<sup>3</sup> jointly with the European Court of Human Rights. This handbook sets out the body of non-discrimination law from the ECHR and the EU as a single, converging system. The FRA plans future handbooks of a similar kind, concerning other specific rights, such as asylum or data protection.

Suggestion for action at the European and national level:

- Jointly create tools and awareness-raising material, and promote the use of fundamental rights indicators.

### 1.1.2 Scope of Charter application

Another key challenge linked to the practical implementation of the Charter is the question of its application. The lack of clarity on this issue affects not only individuals who are right-holders under the Charter, but also all actors who bear responsibility for applying this instrument at various levels of governance.

The Charter addresses the "institutions and bodies of the Union with due regard to the principle of subsidiarity" and Member States "when they are *implementing Union law*"<sup>4</sup> (Article 51 (1)). Furthermore, the Charter "does not establish any new power or task for the [...] Union, or modify powers and tasks defined by the Treaties" (Article 51 (2)).

Accordingly, the Charter binds EU institutions in all activities that fall within the scope of their respective spheres of competence. It is, however, more difficult to determine precisely when EU Member States are bound by it.

The difficulty results, firstly, from the discrepancies in the wording of Article 51 (1) and the relevant explanations relating to the Charter.<sup>5</sup> The former uses the wording "implementing Union law"; the latter refers to EU Member States being bound by Union law when they "act in the scope" of it. A strict reading of the former suggests that the Charter binds EU Member States only when they are acting for the EU, that is when executing a regulation or implementing a directive.<sup>6</sup> The latter seems to follow CJEU case law; this suggests that EU Member States are also bound by the Charter when they invoke certain exceptions in

<sup>3</sup> Available at:

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub\\_handbook\\_caselaw\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub_handbook_caselaw_en.htm).

<sup>4</sup> Emphasis added.

<sup>5</sup> Explanations relating to the Charter of Fundamental Rights, OJ 2007 C 303/17.

<sup>6</sup> CJEU, 5/88, *Wachauf* [1989] ECR 2609.

the Treaties.<sup>7</sup> Accordingly, when EU Member States apply exceptions to the internal market freedoms they still need to comply with fundamental rights standards. So far, the CJEU has not provided an unequivocal response as to which reading applies to the Charter.

The CJEU did provide some guidance as regards the obligations resting on Member States when implementing a regulation. In the *N.S.* case,<sup>8</sup> the CJEU ruled that a Member State's discretionary power to decide whether to deal with an asylum claim under the Dublin Regulation<sup>9</sup> triggers application of the Charter. This applies to situations where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that EU Member State amount to substantial grounds for believing that if the applicants were returned to the first country of entry, their fundamental rights would be violated.

Secondly, there is a question as to whether the Charter applies whenever there is a connection with EU law, other than those mentioned above. In the *Dereci* case,<sup>10</sup> the CJEU left the national court to decide whether the given situation was 'covered by EU law'. The case concerned a third-country national seeking family reunification with family members who were EU citizens. These EU citizens had not exercised their right to free movement and thus the situations were not covered by the Family Reunification Directive<sup>11</sup> or the Citizenship Directive.<sup>12</sup> The CJEU ruled that if the national court found that the situation was 'covered by EU law', the Charter must apply. Conversely, if the situation was not covered by EU law, the relevant provision of the ECHR must apply. The only indication the CJEU gave was that EU Member States can refuse to grant residence rights to third-country nationals under the given circumstances, provided this refusal "does not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a citizen of the Union, which is a matter for the referring court to verify".<sup>13</sup>

The CJEU also rejected cases on the ground that they did not fall within the Charter's scope of application. In the *Estov* case,<sup>14</sup> the question arose whether non-recognition under national law, of a right to challenge a decision, relating to the general plan for development of the capital, is incompatible with Article 47 of the Charter. The CJEU held that it has no jurisdiction to give a preliminary ruling since the contested decisions did not constitute a measure implementing EU law and were not "connected in any other way with that law".<sup>15</sup>

---

<sup>7</sup> The reference to Case C-260/89 *ERT* [1991] ECR I-2925 in the explanations (see note 3) confirms this.

<sup>8</sup> CJEU, C-411/10 and C-493/10; the latter not yet reported.

<sup>9</sup> Regulation (EC) No. 343/2003, OJ 2003L 50/1.

<sup>10</sup> CJEU, C-256/11, not yet reported.

<sup>11</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification 2003/86/EC, OJ 2003 L 251/12.

<sup>12</sup> Directive 2004/38/EC, OJ 2004 L 158/77.

<sup>13</sup> *Ibid.*, para. 74; see also CJEU, C-34/09, *Ruiz Zambrano*, not yet reported.

<sup>14</sup> CJEU, C-339/10.

<sup>15</sup> *Ibid.*, para. 14.

Examples like these show that the court's case law does not yet provide full clarity on the issue, so that the question of when EU law is actually applicable to an individual case will often remain open until it is decided by the court. What is true already for experts applies even more to the public. Many 'false expectations' from individuals derive from doubts as to whether, and when, their Charter rights can be invoked. This has repercussions not only for the judicial system (receiving applications that do not fall within the scope of the Charter), but also for other national authorities and complaint mechanisms, which may be confronted with claims of rights under the Charter.

Given the degree of possible unclarity in this area, writing a *Guide* on the 'scope of application of the Charter' for practitioners is a possibility. The guide could set out which situations clearly fall within the Charter's scope of application and which do not, as well as provide guidance, through case law, on situations that are unclear.

Such a guide would be directed at legal practitioners, policy makers and non-governmental organisations. Effective communication on the key points of the guide's content, targeted specifically at the general public, could complement the publication of its full text.

A suggestion for all actors:

- It would be useful to publish a guide on the scope of application of the Charter, which would be directed at legal practitioners, policy makers, and non-governmental organisations; audiovisual tools would also be instrumental in producing awareness-raising materials on the Charter.

### 1.1.3 Information and access to redress mechanisms

Practical implementation of the Charter also requires effective enforcement when rights are violated. This presupposes that individuals are aware of the most appropriate avenue to deal with their cases, under given circumstances. This does not currently occur, as illustrated by the fact that the Commission "receives many letters about situations for which it has no competence under the Treaties because they are unrelated to Union law".<sup>16</sup> A similar situation also arises in relation to the Petitions Committee of the European Parliament, even though it has a broader mandate.<sup>17</sup> In fact, the newest Eurobarometer on the subject shows that awareness of the Charter is increasing but remains very low. More than one-third (36 %) of the general population interviewed have never heard of the Charter and the majority, 55 %, incorrectly say that it is true that the Charter applies to all actions of EU Member States, including matters of national competence.<sup>18</sup>

<sup>16</sup> European Commission (2010), *Communication establishing a 'Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union'*, COM(2010) 573/4, Brussels, 19 October 2010, p. 11.

<sup>17</sup> Union citizens have the fundamental right to petition the European Parliament "individually or in association with other citizens or persons [...] on a matter which comes within the Union's fields of activity and which affects him, her or it directly" under Art. 227 of the TFEU.

<sup>18</sup> Flash Eurobarometer 340, available at: [http://ec.europa.eu/public\\_opinion/flash/fl\\_340\\_sum\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_340_sum_en.pdf).

The European Commission operates the European e-Justice portal<sup>19</sup> to provide professionals and the public with information on justice systems and improve access to justice. The FRA, through its project on 'Complaints, legal Assistance and rights information tools for you (C.L.A.R.I.T.Y.)', which is included in its annual work programme 2013, will aim at complementing the European Commission portal with a tool guiding the user to appropriate redress mechanisms.

Individuals not only need to be able to access information on redress mechanisms easily, they also should receive guidance on where exactly to lodge a complaint if they have 'knocked on the wrong door'. It is of paramount importance not to create disappointment by leaving individuals to find their own way through the complex European landscape of rights protection. A lack of appropriate guidance may create distrust in the entire fundamental rights system and undermine the political message of the Charter.

Since the EU's fundamental rights landscape is complex,<sup>20</sup> individuals should be properly guided to the appropriate body when seeking assistance and redress, so that no individuals are left without a response to their complaint, and the coherence of the fundamental rights system is demonstrated and reaffirmed. Establishing a network of existing systems and mechanisms for protecting and promoting rights might help achieve this. This network could include the European Commission, the European Parliament's Committee on petitions, the European Ombudsman, the European Data Protection Supervisor, equality bodies, national human rights institutions, other institutions with a human rights remit and national authorities, the registries of the CJEU and the ECtHR as well as the FRA.

Suggestion for action for all EU institutions and all national human rights bodies:

- Create and/or further develop existing networks for dealing with individual complaints, awareness raising and the provision of support within their respective competences.

## 1.2 Visibility: The extent to which the EU institutions are embracing the Charter is not always sufficiently transparent

### 1.2.1 CJEU judgments

Since the Charter acquired legally binding status after the Lisbon Treaty entered into force, the number of CJEU cases referring to this instrument is increasing. The number of decisions

<sup>19</sup> Available at: <https://e-justice.europa.eu/home.do?action=home>.

<sup>20</sup> See FRA (2012), Annual Report 2011: FOCUS - Bringing rights to life: The fundamental rights landscape of the European Union, available at: [http://fra.europa.eu/fraWebsite/attachments/FRA-2012\\_annual-report-2011-fundamental-rights-landscape\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/FRA-2012_annual-report-2011-fundamental-rights-landscape_EN.pdf).

in which it quoted the Charter in its reasoning rose by more than 50 % in 2011 over 2010, to 42 decisions from 27. When national courts address questions to the CJEU, they also (preliminary rulings) increasingly refer to the Charter: in 2011, such references rose by 50 % compared with 2010, to 27 references from 18.<sup>21</sup>

This is a natural result of the attention it has attracted on behalf of legal practitioners (lawyers and national judges), as a modern instrument that provides enhanced visibility of rights, which can be invoked in legal proceedings. It is also a logical consequence of the court's changed reasoning: it now has the Charter (not the ECHR) as its first point of reference in cases involving fundamental rights. The ECHR will inevitably, however, continue to play an important role, not only because of the obligation laid down in Article 52 (3) of the Charter, but also in view of the future EU accession to the ECHR as required by Article 6 of the TEU.

If the number of cases involving fundamental rights continues to increase, the CJEU will also increasingly face situations that require it to consult widely. This includes additional legal texts on fundamental human rights and the case law of other courts – nationally or internationally. The diversity of EU legal sources is another reason why it will have to consult a wide range of legal texts.

One question concerning visibility will be the extent to which the CJEU's judgments provide for elaborate fundamental rights reasoning. This would also reflect the degree to which other fundamental rights sources are drawn upon and how rights are interpreted more widely.

### 1.2.2 Implementing the Charter in legislative and policy action at EU level

The EU institutions have acted to integrate the Charter more effectively in the implementation of their activities ever since the Lisbon Treaty entered into force. To that end, in 2010 the European Commission adopted a Communication establishing a *Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union*,<sup>22</sup> with the overall policy objective of making "the fundamental rights provided for in the Charter as effective as possible"<sup>23</sup> and ensuring that the EU is exemplary in this regard. The new strategy envisages a strengthened fundamental rights culture in the European Commission when legislative proposals are prepared (such as for impact assessments<sup>24</sup> and Charter-compliance checks of draft legislative texts), during the legislative process, as well as ensuring that Member States respect the Charter when implementing Union law (through the use of preventive mechanisms, such as political negotiations and, eventually, the use of

<sup>21</sup> European Commission (2012), *2011 Report on the Application of the EU Charter of Fundamental Rights*, COM(2012) 169 final, Brussels, 16 April 2012, p. 6.

<sup>22</sup> European Commission (2010), *Communication establishing a 'Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union'*, COM(2010) 573/4, Brussels, 19 October 2010.

<sup>23</sup> *Ibid.*, p. 3.

<sup>24</sup> See also: European Commission (2011), *Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments*, SEC(2011) 567 final, Brussels, 6 May 2011.

infringement procedures). The European Commission also created an inter-service coordination group on the implementation of the EU Charter of Fundamental Rights, with a view to building up coherence in the implementation of the Charter strategy, for instance, and to share knowledge and experience between EU Directorate-Generals on the matter.

In 2011, the Council of the European Union adopted *Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's Preparatory Bodies*.<sup>25</sup> They aimed at helping Council preparatory bodies "take the methodological steps necessary to identify and deal with fundamental rights issues arising in connection with the proposal under discussion at the given Council preparatory bodies" as well as "raising the general awareness regarding fundamental rights matters in the Council preparatory bodies."<sup>26</sup> The Guidelines encourage making use of the Council Legal Service, the expertise of national experts as well as the Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP). The guidelines also state that the "The European Union Agency for Fundamental Rights may, in line with its mandate, formulate and publish conclusions and opinions on specific thematic topics, at the request of the Council. The Council preparatory bodies should bear in mind this possibility and the invitation set out in the Stockholm Programme to the EU institutions to make full use of the expertise of the Agency."<sup>27</sup>

The European Parliament has standard procedures in place for fundamental rights scrutiny of legislation, including the possibility to consult the Parliament's legal service or to request an opinion from the FRA.<sup>28</sup> Additionally, a new rule of procedure introduced at the end of 2009 allows the Committee on Civil Liberties, Justice and Home Affairs (LIBE) to include an additional procedure for *ex ante* fundamental rights scrutiny. This allows a committee responsible for a subject matter, a political group, or at least 40 Members of Parliament, to refer a matter to "the committee responsible for the interpretation of the Charter" (LIBE), where it considers that a proposal for a legislative act or parts of it do not comply with the rights enshrined in the Charter.<sup>29</sup>

Some of the procedural stages of the policy-making and legislative processes mentioned above are not subject to public debate. This may raise questions of visibility. For instance, this is the case with regard to the conduct of Charter compatibility assessments, most notably when legislative drafts are scrutinised.

---

<sup>25</sup> Council of the European Union (2011), *Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies*, doc No. 10140/11, Brussels, 18 May 2011.

<sup>26</sup> *Ibid.*, p. 2.

<sup>27</sup> *Ibid.*, p. 6.

<sup>28</sup> See rule 126 of the European Parliament's rules of procedures ("requests to European agencies"). After the seminar, the General Affairs Council, in its Conclusions of 26 June 2012 on the 2011 report from the Commission on the Application of the EU Charter of Fundamental Rights encouraged: "all EU institutions and the Member States to make full use of the expertise of the Agency and to consult with the Agency, where appropriate and in line with its mandate, on the development of legislation **and policies** with implications for fundamental rights" (see 3180<sup>th</sup> General Affairs Council meeting, Luxembourg, 26 June 2012, para. 11, available on: [www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/jha/131230.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/131230.pdf)).

<sup>29</sup> European Parliament, Rules of Procedure, Rule 36.

Taking fundamental rights into account in the preparation and adoption of legislation is increasingly common at EU level. The additional involvement of independent bodies could be useful in this regard.

## 2 Applying the Charter at the national level

### 2.1 Closer integration of all bodies concerned with fundamental rights promotion and/or protection operating at the national level

Given that human and fundamental rights are first and foremost a matter for the national level, there is a need to ensure close integration of all national bodies, such as National Human Rights Institutions (NHRIs), equality bodies, national data protection authorities, and ombudsmen, to promote and/or protect fundamental rights. There is also a need to link the EU and the Charter on the one hand with the national legal orders on the other. Acting within their respective mandates, these bodies can contribute, for example by:

- including/mainstreaming the Charter and international human rights standards in legislative scrutiny checks, and aiming to keep the level of protection and promotion in line with these standards;
- educating and raising public awareness on the content of the Charter, the existing fundamental rights landscape and available redress mechanisms in Europe to which individuals can turn;
- providing advice to individuals on the mechanisms and bodies available for accessing rights and assistance, including at EU or international levels.

Strong regional cooperation of the respective types of bodies, with structures like Equinet, the European Network of Equality Bodies, and the European Group of NHRIs, is important to enhance the national application of the Charter. These bodies and networks can facilitate the Charter application by serving as contacts and steering points.

### 2.2 Making the Charter a point of reference in public discourse and frontline action

The complex institutional and constitutional backdrop against which the Charter operates calls for careful communication. It is important, however, that this instrument, and the rights it enshrines, becomes a point of reference in public discourse. All policy actors at the EU and national levels, as well as civil society, can contribute towards this by ensuring adequate references to the Charter.

Furthermore, civil society organisations can initiate a process of using the Charter in public discourse through acknowledging and recognising its importance. This could be through, for example, joint declarations and awareness raising through the volunteer sector. For such a streamlining process to become meaningful, it must go hand-in-hand with ensuring that these organisations are equipped with the necessary tools to allow informed frontline action. These tools could allow organisations to:

- apply Charter provisions that are relevant to them in practice, such as in the form of guides on the Charter;
- measure progress achieved in annual reports, for example, using methods including fundamental rights indicators.

## 2.3 The Charter in litigation

Another route for the practical implementation of the Charter is its use in litigation in national proceedings, as well as in proceedings before the CJEU. Litigating NGOs can have an important function in raising the profile of the Charter throughout case law by invoking existing precedents, while also facilitating individuals' access to court proceedings. Interventions of these bodies, but also of NHRIs and equality bodies,<sup>30</sup> as third parties to proceedings, may facilitate such mainstreaming, and can be pursued more actively at national level proceedings, in view of the practice and rules in relation to proceedings before the CJEU.<sup>31</sup>

Furthermore, since lawyers are one of the first contact points of individuals seeking redress through legal proceedings, it is important that they receive adequate information and training on the content and application of the Charter.

## Concluding remarks and the way forward

The discussions during the seminar centred on the various concerns linked to the practical implementation of the Charter, the identification of existing challenges and potential areas for improvement. On the question of Charter applicability, for instance, it is often unclear which concrete aspects of fundamental rights are covered under EU law. This lack of clarity is especially felt by the holders of rights, but also by those bodies and authorities, which at the national and international levels, are responsible for ensuring implementation.

---

<sup>30</sup> See, for example, the interventions of Amnesty International and the Advice on Individual Rights in Europe Centre (AIRE), United Nations High Commissioner for Refugees (UNHCR) and the Equality and Human Rights Commission in the CJEU cases C-411/10 and C-493/10, *N.S.* not yet reported.

<sup>31</sup> See further the CJEU Rules of Procedure of the Court of Justice on [http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-07/rp\\_cjue\\_en.pdf](http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-07/rp_cjue_en.pdf).

Among the key challenges participants identified were:

- ensuring that EU citizens and others living or residing in the EU know the precise scope of application of the Charter and their rights;
- responding to the expectations of these persons – which can sometimes be unrealistic – by providing targeted information, especially as to whether and when the Charter rights can be invoked, as well as on the appropriate redress mechanisms;
- guaranteeing that EU and Member State institutions and authorities are fully aware of the concrete implications of the obligations under the Charter in their day-to-day relations with rights holders and in their inter-institutional relations.

Suggestions for actions participants identified included:

- ensuring targeted information on the Charter and dissemination of this information, including jointly creating tools/mechanisms and developing awareness-raising material, especially at the national level;
- collecting additional information on the fundamental rights situation at the EU and national levels;
- strengthening efforts aimed at building capacity and knowledge regarding the content and implications of the Charter in the context of the daily work of public authorities, national human rights institutions and civil society actors;
- creating networks for improving and developing access to redress mechanisms aiming to close existing gaps which prevent individuals from obtaining redress.

The discussions showed that more synergies are needed to maximise the use of the limited knowledge and resources available to ensure that the Charter is applied. In meeting this shared responsibility, the key words are cooperation and coordination, among the various actors involved, at the EU and national levels, in civil society as well as in public administrations, and other institutions and bodies, of the EU and its Member States.<sup>32</sup>

---

<sup>32</sup> See e.g. FRA (2012), Annual Report 2011: FOCUS - Bringing rights to life: The fundamental rights landscape of the European Union, available at: [http://fra.europa.eu/fraWebsite/attachments/FRA-2012\\_annual-report-2011-fundamental-rights-landscape\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/FRA-2012_annual-report-2011-fundamental-rights-landscape_EN.pdf).

## Seminar programme

<b>DAY 1</b>	<b>15 March 2012</b>	<b>12:30 FRA Presentation</b>
	<b>Welcome &amp; Introduction</b>	Pilot mobile Web app on the EU Charter- getting participants' feedback
<b>13:00</b>	<b>Arrival and registration of participants</b>	
<b>13:30</b>	<b>Welcome &amp; introduction</b> <ul style="list-style-type: none"> <li>Morten Bødskov, Danish Minister of Justice</li> <li>Ilze Brands Kehris, Chairperson of the European Union Agency for Fundamental Rights (FRA) Management Board</li> </ul> <b>Video message</b> <ul style="list-style-type: none"> <li>Viviane Reding, Vice-President of the European Commission</li> </ul> <b>Keynote speech</b> <ul style="list-style-type: none"> <li>Morten Kjærsum, Director of the FRA</li> </ul>	
<b>14:15</b>	<b>Coffee/Tea Break</b>	
	<b>Putting the Charter into Practice at EU Level</b>	
<b>14:30</b>	<i>Panel Debate (moderated by Jeremy McBride, Chairperson of the Scientific Committee of the FRA)</i>	
	<b>Opportunities and challenges for EU institutions and bodies</b>	
<b>Questions:</b>	<ol style="list-style-type: none"> <li>The status quo: how is the Charter implemented by EU bodies and institutions during the process of elaborating, scrutinising the validity of, or handling complaints about or hearing cases concerning EU law, policy or practice?</li> <li>The potential for improvement: how could the Charter be applied more rigorously during these processes? Should this include for instance increased training on fundamental rights of staff, or making greater use of expertise within other EU bodies or institutions?</li> <li>What improvements could be delivered in the short-term within current institutional constraints, and what improvements could be made over the long-term through future reform?</li> <li>How could inter-institutional co-operation be improved in order to facilitate the implementation of the Charter? <ul style="list-style-type: none"> <li>Vassilios Skouris, President of the European Court of Justice</li> <li>Paul Nemitz, Director for Fundamental Rights and Union Citizenship, European Commission</li> <li>Gráinne de Búrca, Professor, New York University School of Law</li> <li>Jean-Paul Jacqué, College of Europe, Bruges, Honorary Director-General and Special Counselor of the Council of the European Union</li> </ul> </li> </ol>	
	<b>Plenary discussion</b>	<b>16:00 FRA Presentation</b>
<b>16:00</b>	<b>Coffee/Tea Break</b>	Pilot mobile Web app on the EU Charter- getting participants' feedback

Putting the Charter into Practice at National Level	
16:30 – 18:00	<i>Panel Debate (moderated by Jonas Christoffersen, Executive Director of the Danish Institute for Human Rights)</i>
	<b>Opportunities and challenges for national bodies</b>
<b>Questions:</b>	<ol style="list-style-type: none"> <li>1. The status quo: how, if at all, is the Charter implemented by national parliaments, governments and judicial authorities in the transposition, implementation and interpretation of EU law? Is the Charter seen to add value to existing human rights provisions in national, European or international law?</li> <li>2. The potential for improvement: how could the Charter be applied more rigorously during these processes? For example, by making greater use of expertise at the EU, national, and local levels, or by ensuring the provision of legal advice or other support.</li> <li>3. What improvements could be delivered in the short-term within current institutional or resource constraints, and what improvements could be made over the long-term through future reform?</li> <li>4. How could the EU institutions and bodies assist Member States in implementing the Charter? <ul style="list-style-type: none"> <li>• Mielle Bultermann, Head of litigation team, Ministry of Foreign Affairs of the Netherlands</li> <li>• Sophia Koukoulis-Spiliotopoulos, Member of the Greek National Commission for Human Rights, Attorney and Counselor at Law</li> <li>• Marcella Prubauer-Glaser, President of the Council of Bars and Law Societies of Europe</li> <li>• Giuseppe Tesauo, former Advocate General of the European Court of Justice, Member of the Italian Constitutional Court</li> <li>• Jörg Polakiewicz, Head of Human Rights Policy and Development Department, Council of Europe</li> </ul> </li> </ol>
	<b>Plenary discussion</b>
19:30	<b>DINNER</b> at the Odd Fellow Palace Bredgade 28, 1260 Copenhagen

**18:00 FRA Presentation**

Pilot mobile Web app on the EU Charter- getting participants' feedback

<b>DAY 2</b>	<b>16 March 2012</b>	<b>09:00 FRA Presentation</b>
	<b>Improving Citizens' Access to Charter Rights</b>	Pilot mobile Web app on the EU Charter- getting participants' feedback
<b>09:15</b>	<b>Opening</b>	
<b>09:30</b>	<p><b>Serving the people in Europe: the contribution of European and national human rights institutions and mechanisms</b></p> <ul style="list-style-type: none"> <li>• Alan Miller, Chair of the Scottish Human Rights Commission, Chair of the European Group of National Human Rights Institutions</li> <li>• David Lowe, Head of the Secretariat of the Committee on Petitions of the European Parliament</li> <li>• Peter Reading, Director of Legal Policy, Equality and Human Rights Commission, UK</li> <li>• Jonas Grimheden, Programme manager Legal Research, FRA</li> </ul>	
<b>Questions:</b>	<ol style="list-style-type: none"> <li>1. The status quo: how does the Charter feature in the work of national and EU bodies specialising in handling complaints, informing or otherwise supporting individuals with fundamental rights complaints, and promoting fundamental rights protection more generally? Is the Charter seen to add value to existing human rights provisions in national, European or international law?</li> <li>2. The potential for improvement: how could the Charter be applied more rigorously during these processes? For example, by increasing awareness of the Charter among the public, including greater understanding of where it does and does not apply.</li> <li>3. What improvements could be delivered in the short-term within current institutional constraints, and what improvements could be made over the long-term through future reform?</li> <li>4. How could EU Citizens and other persons living in the EU improve their use of the work of European and National Human Rights Institutions and non-governmental organizations and increase the benefits derived from this work in implementing the Charter? Is there a way these institutions can assist them in this improvement?</li> </ol>	
<b>10:15</b>	<b>Coffee/Tea Break</b>	

<b>10:30</b>	<b><i>Panel debate (moderated by Alan Miller, Scottish Human Rights Commission)</i></b>
<b>12:00</b>	<b>Serving the people in Europe: the contribution of non-governmental organisations – perspectives from civil society and national human rights institutions</b>
<b>Questions:</b>	<ol style="list-style-type: none"> <li>1. The status quo: how, if at all, do NGOs rely on the Charter when providing support or advice to individuals with fundamental rights complaints, or in promoting fundamental rights protection more generally through advocacy work? Is the Charter seen to add value to existing human rights provisions in national, European or international law?</li> <li>2. The potential for a stronger role: do NGOs have the potential to play a broader role in increasing awareness about the potential value and limitations of the Charter, both amongst the general population and amongst policy-makers and complaints bodies at the national and EU levels?</li> <li>3. What improvements could be effected in existing law and policy-making processes and in the handling of complaints, in order to make the Charter more effective in practice? Do NGOs have a potential role to play in putting these improvements into effect?</li> <li>4. How could EU citizens and other persons living in the EU better benefit from the work of non-governmental organisations in implementing the Charter? Is there a way these organisations can improve their support, better ensuring these persons benefit more from this assistance? <ul style="list-style-type: none"> <li>• Nicolas Beger, Director, Amnesty International's EU Office</li> <li>• David McKenna, President of Victim Support Europe</li> <li>• Nuala Mole, Director of the AIRE Centre (Advice on individual rights in Europe)</li> <li>• Victoria Vasey, Legal Director of the European Roma Rights Centre</li> </ul> </li> </ol>
<b>12:55</b>	<b>Plenary discussion</b>
<b>12:00</b>	<b>Conclusions</b> Panel moderators and FRA Director
<b>12:55</b>	<b>Closing remarks</b> Nina Holst-Christensen, Commissioner in EU and Human Rights Law, Danish Ministry of Justice
<b>13:00</b>	<b>LUNCH and end of seminar</b>
<b>14:15 – 15:00</b>	<b>OPTIONAL: Coffee and Danish on the harbour</b> Cruise of Copenhagen harbour



Schwarzenbergplatz 11 - 1040 Wien - Austria  
Tel: +43 (1) 580 30-0 - Fax: +43 (1) 580 30-699  
[fra.europa.eu](http://fra.europa.eu) - [information@fra.europa.eu](mailto:information@fra.europa.eu)  
[facebook.com/fundamentalrights](https://www.facebook.com/fundamentalrights)  
[twitter.com/EURightsAgency](https://twitter.com/EURightsAgency)