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CORRIGENDUM
This document replaces SWD(2016) 158 final of 19.5.2016
Correction of footnotes 220 and 221

The text shall read as follows:

COMMISSION STAFF WORKING DOCUMENT

Staff Working Document on the Application of the EU Charter of Fundamental Rights in 2015

Accompanying the document

Report from the Commission to the European Pariliament, the Council, the European Economic and Social Committee and the Committee of the Regions

2015 Report on the Application of the EU Charter of Fundamental Rights

{COM(2016) 265 final}

Introduction

After the entry into force of the **EU Charter of Fundamental Rights**[1] (the Charter), in December 2009, the Commission adopted a **Strategy on the effective implementation of the Charter**[2] setting as an objective that the EU is beyond reproach as regard the respect of fundamental rights, in particular when it legislates. The Commission further committed to preparing Annual Reports to better inform citizens on the application of the Charter and to measure progress in its implementation. The reports are intended to serve as a factual basis for the continuing informed dialogue between all EU institutions and Member States on the implementation of the Charter.

This Report covers the year 2015 and informs the public about situations in which they can rely on the Charter and on the role of the European Union in the field of fundamental rights. In covering the full range of Charter provisions on an annual basis, the Annual Report aims to track where progress is being made, where further efforts are still necessary and where new concerns are arising.

The Annual Report is based on the actions taken by the EU institutions, on the analysis of letters and petitions from the general public and questions from the European Parliament. In addition, the report covers key developments as regards the jurisprudence of the Court of Justice of the European Union (CJEU), and provides information on the case law of national courts on the Charter, based on analysis carried out by the EU Agency for Fundamental Rights (FRA).

Protection of Fundamental Rights in the EU

In the European Union, the protection of fundamental rights is guaranteed both at national level by Member States' constitutional systems and at EU level by the Charter.

The Charter applies to all actions taken by the EU institutions. The role of the Commission is to ensure that all its acts respect the Charter. In fact, all EU institutions (including the European Parliament and the Council) must respect the Charter, in particular throughout the legislative process.

The Charter applies to Member States only when they implement EU law. Hence it does not replace national fundamental rights systems but complements them. The factor connecting an alleged violation of the Charter with EU law will depend on the situation in question. For example, a connecting factor exists: when national legislation transposes an EU Directive in a way contrary to fundamental rights, when a public authority applies EU law in a manner contrary to fundamental rights, or when a final decision of a national court applies or interprets EU law in a way contrary to fundamental rights.

[1] Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF.

[2] Available at: http://ec.europa.eu/justice/news/intro/doc/com_2010_573_en.pdf.

If a national authority (administration or court) violates fundamental rights set out in the Charter when implementing EU law, the Commission can take the matter to the **CJEU** and start an infringement procedure against the Member State in question. The Commission is not a judicial body or a court of appeal against the decisions of national or international courts. Nor does it, as a matter of principle, examine the merits of an individual case, except if this is relevant to carry out its task of ensuring that the Member States apply EU law correctly. In particular, if it detects a wider, e.g. structural, problem, the Commission can contact the national authorities to have it solved, and ultimately it can take a Member State to the CJEU. The objective of these infringement procedures is to ensure that the national law in question - or a practice by national administrations or courts - is aligned with the requirements of EU law.

Where individuals or businesses consider that an act of the EU institutions directly affecting them violates their fundamental rights as enshrined in the Charter, they can bring their case before the CJEU, which, subject to certain conditions, has the power to annul the act in question.

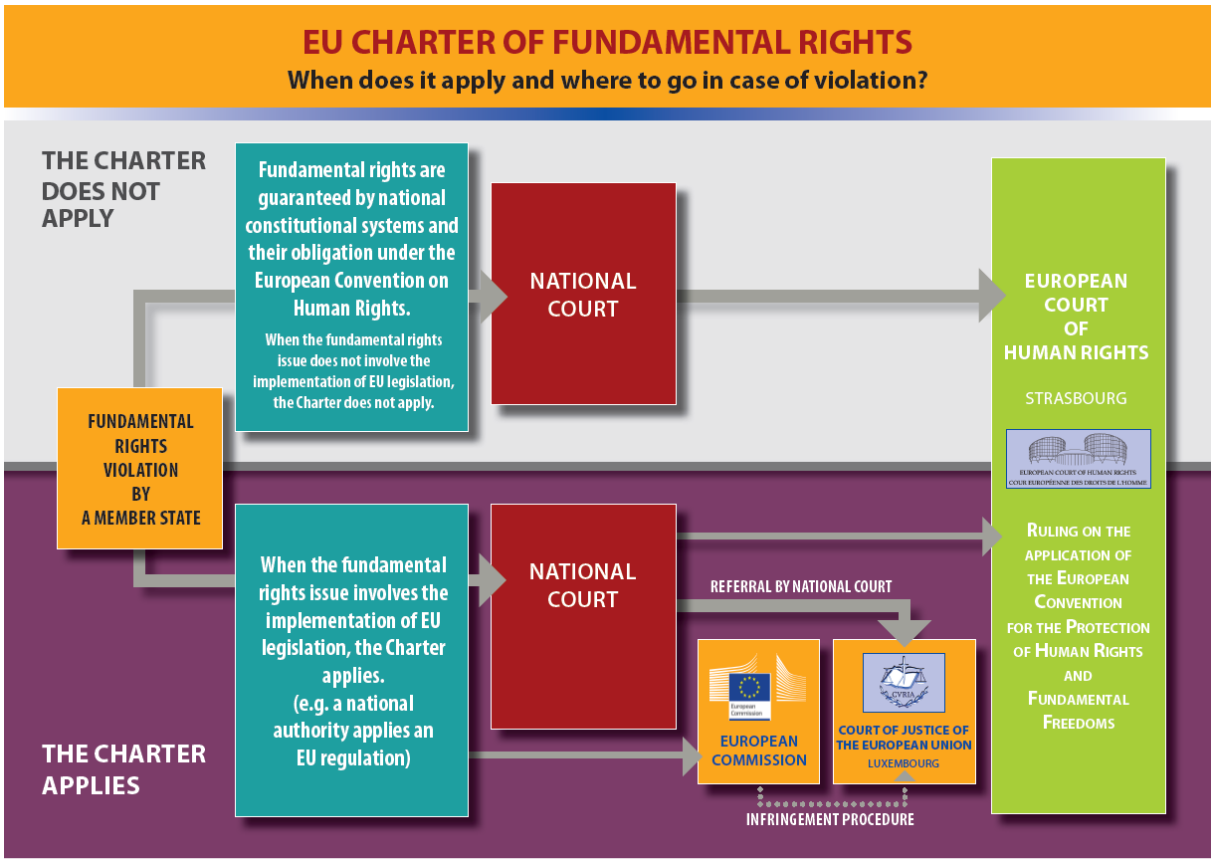
The Commission cannot pursue complaints which concern matters outside the scope of EU Law. This does not necessarily mean that there has not been a violation of fundamental rights. If a situation does not relate to EU law, it is for the Member States alone to ensure that their obligations regarding fundamental rights are respected. Member States have extensive national rules on fundamental rights, which are guaranteed by national judges and constitutional courts. Accordingly, complaints in this context need to be directed to the national level.

Therefore, where the Charter is not applicable in certain situations within an EU Member State, two other sources of protection for fundamental rights exist: Individuals may have recourse to **national remedies** and, after having exhausted them, they can lodge an **application to the European Convention on Human Rights (ECHR)**, in accordance with that convention.

In fact, all EU Member States are bound by the commitments they have made under the ECHR, independent of their obligations under EU law. Therefore, as a last resort and after having exhausted all legal remedies available at national level, individuals may bring an action before the European Court of Human Rights in Strasbourg for a violation by a Member State of a right guaranteed by the ECHR. The European Court of Human Rights (ECtHR) has designed an admissibility checklist in order to help potential applicants work out for themselves whether there may be obstacles to their complaints being examined by the ECtHR.[3]

Furthermore, the interpretation of the Charter rights which correspond to rights guaranteed by the ECHR must correspond to the interpretation of the latter by the ECtHR.

[3] Available at: http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Checklist/.



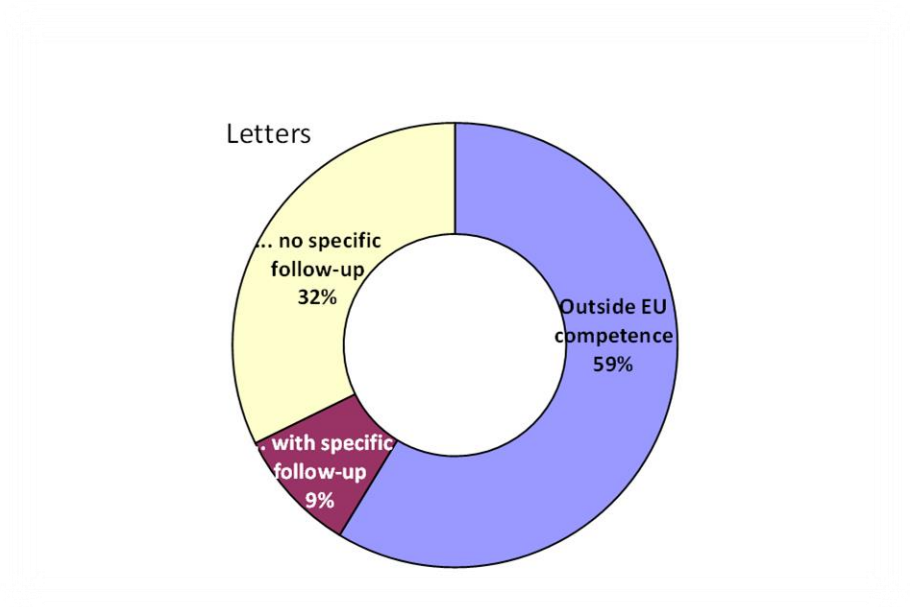
EU accession to the European Convention of Human Rights

The Treaty of Lisbon has imposed an obligation on the EU to accede to the ECHR. In April 2013, the draft agreement on accession of the EU to the ECHR was finalized. The opinion of the Court of Justice of December 2014, by which the Court declared the 2013 draft Accession Agreement incompatible with the Treaties, raised legally and politically complex issues. After a reflection period during which the Commission has examined the best way forward, in both legal and political terms, the Commission, in its capacity as EU negotiator, is now consulting with the special committee designated by the Council on concrete solutions for the different issues raised in the opinion of the Court of Justice.

Overview of the letters and questions to the Commission on fundamental rights

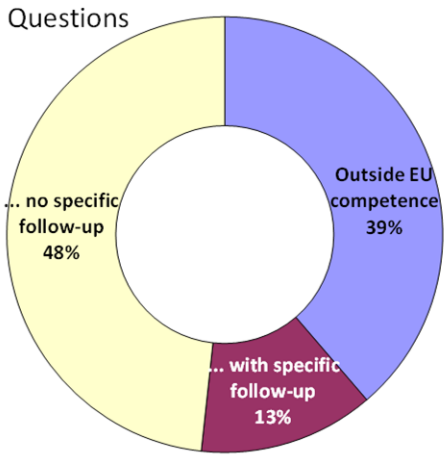
During 2015, the Commission received almost 2200 letters from the general public concerning fundamental rights issues as well as 930 questions from the European Parliament concerning fundamental rights issues.

It has also received 916 petitions from the European Parliament, 187 of which concerned fundamental rights.[4]



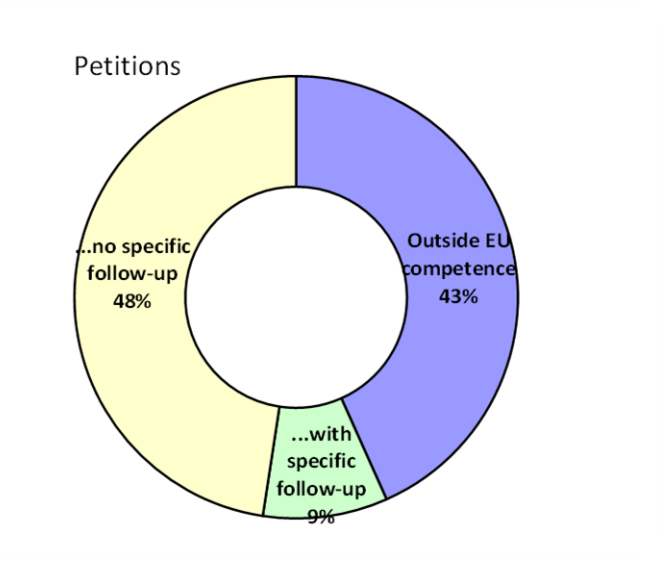
Among the letters from the general public on fundamental rights issues received by the Commission in 2015, 895 concerned issues within EU competence.

In a number of cases, the Commission requested information from the Member States concerned or explained to the complainant the applicable EU rules. In other cases, the complaints should in fact have been addressed to the national authorities or to the ECtHR. Where possible, complainants were redirected to other bodies for more information (such as national data protection authorities).



Among the questions from the European Parliament, 570 concerned issues within EU competence.

[4] See also below under Article 44 on the right to petition.

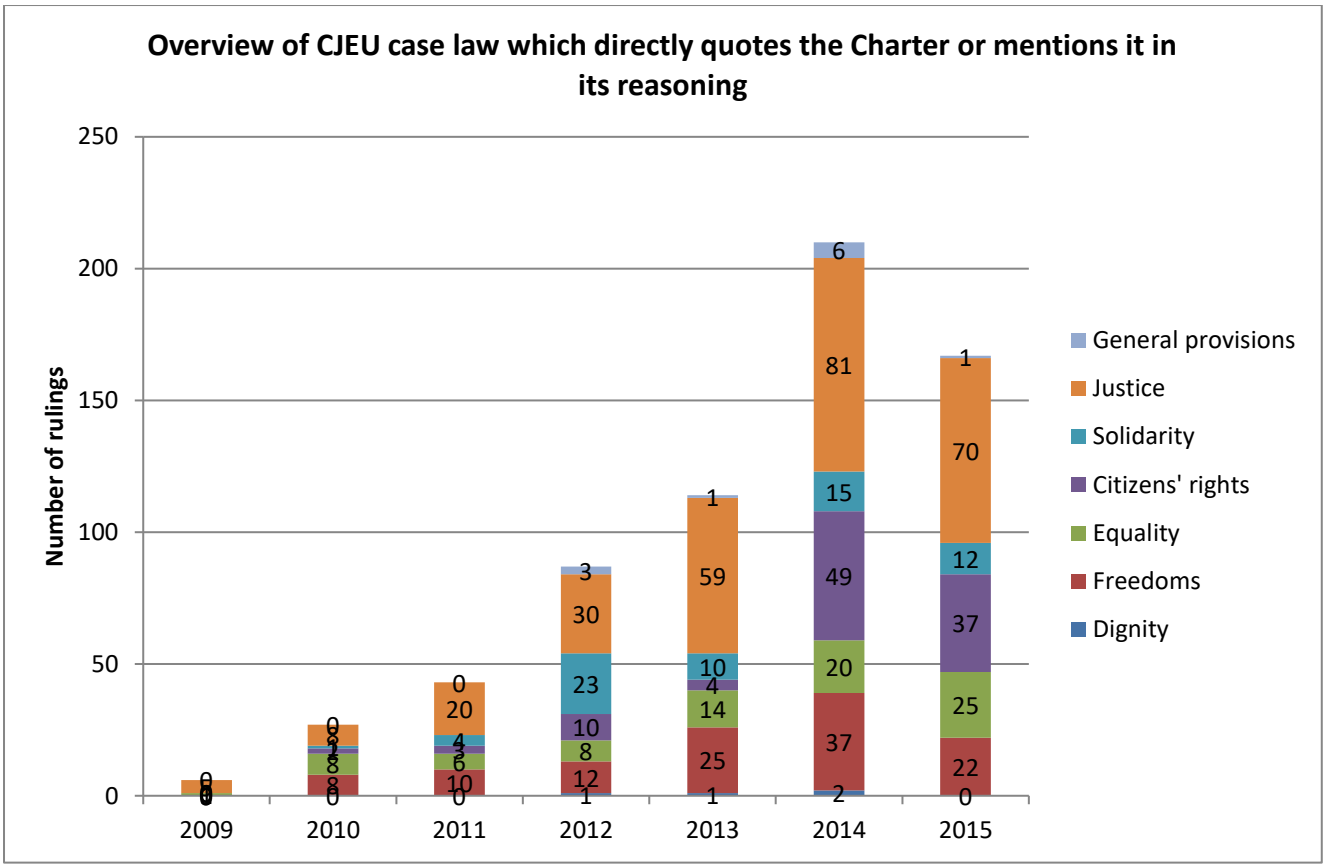


Among 187 petitions, 106 concerned issues within EU competence.

In a number of cases, the Commission contacted the Member States to obtain clarifications on alleged violations. The replies given by the Commission explained or clarified the relevant policies and on-going initiatives.

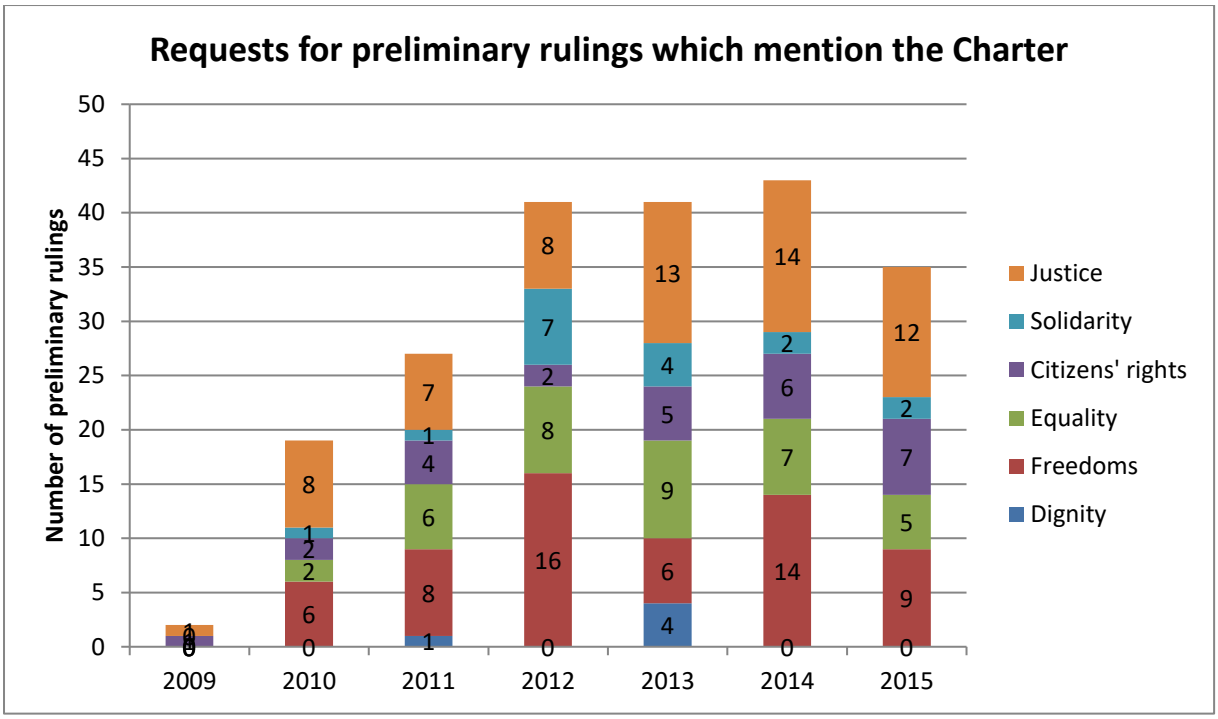
Overview of the decisions of the Court of Justice of the European Union (Court of Justice, General Court and Civil Service Tribunal) referring to the Charter

The European Union Courts have increasingly referred to the Charter in their decisions. The number of decisions of these Courts quoting the Charter in their reasoning developed from 43 in 2011 to 87 in 2012. In 2013, the number of these decisions quoting the Charter amounted to 113, which is almost a triple of the number of cases of 2011. In 2014, this number rose even higher to 210 cases while in 2015 it settled at 167 (see Appendix I for an overview of all relevant rulings).



Source: European Commission

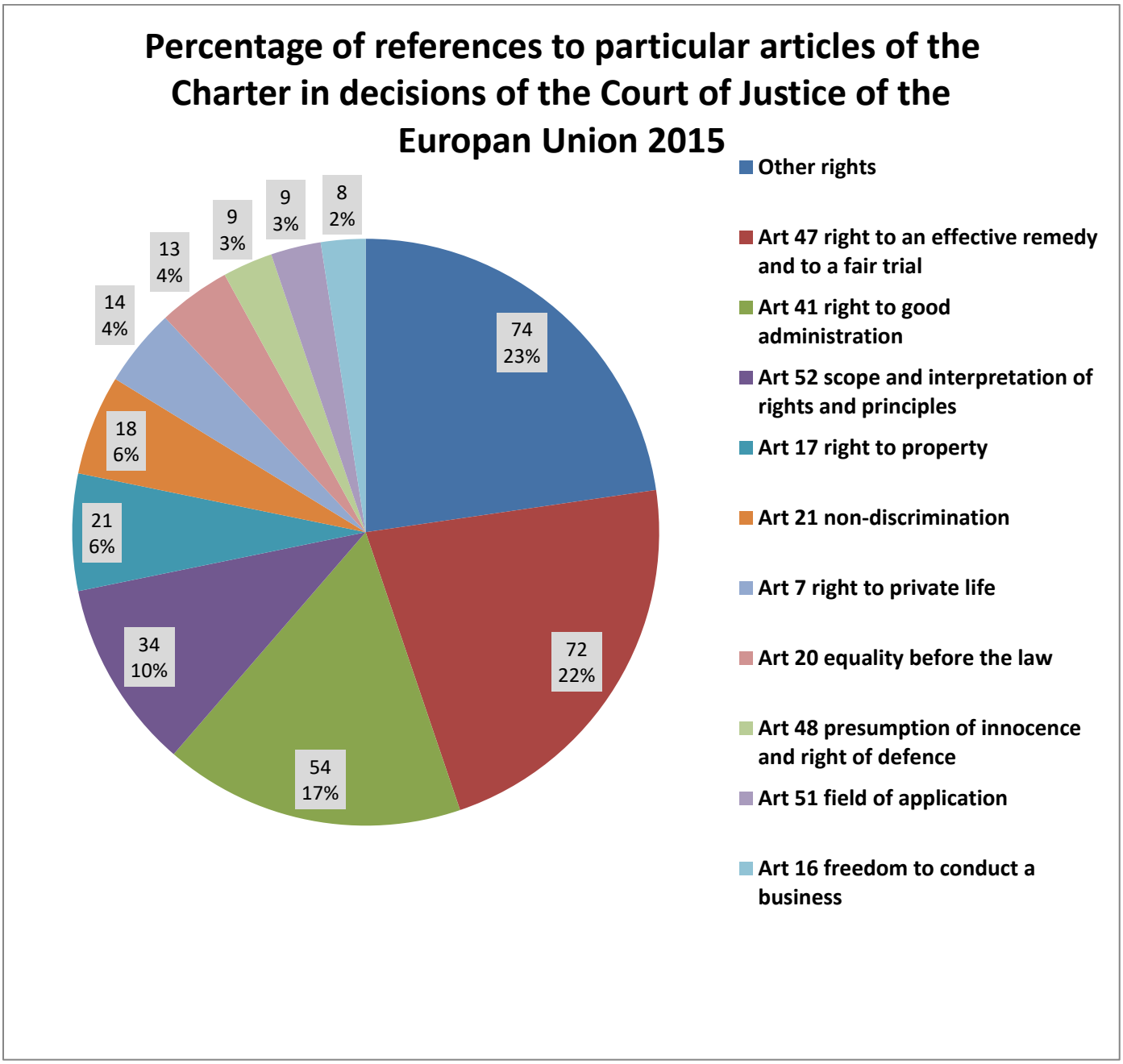
National courts when addressing questions to the CJEU (applications for preliminary rulings) are often referring to the Charter. Regarding applications for preliminary rulings submitted by national judges to the CJEU in 2015, 36 of the requests submitted contained a reference to the Charter, compared to 43 in 2014 (See Appendix II for an overview of the applications for preliminary rulings submitted in 2015 which refer to the Charter).



Source: European Commission

References to Charter rights in decisions of the Court of Justice of the European Union and of national courts

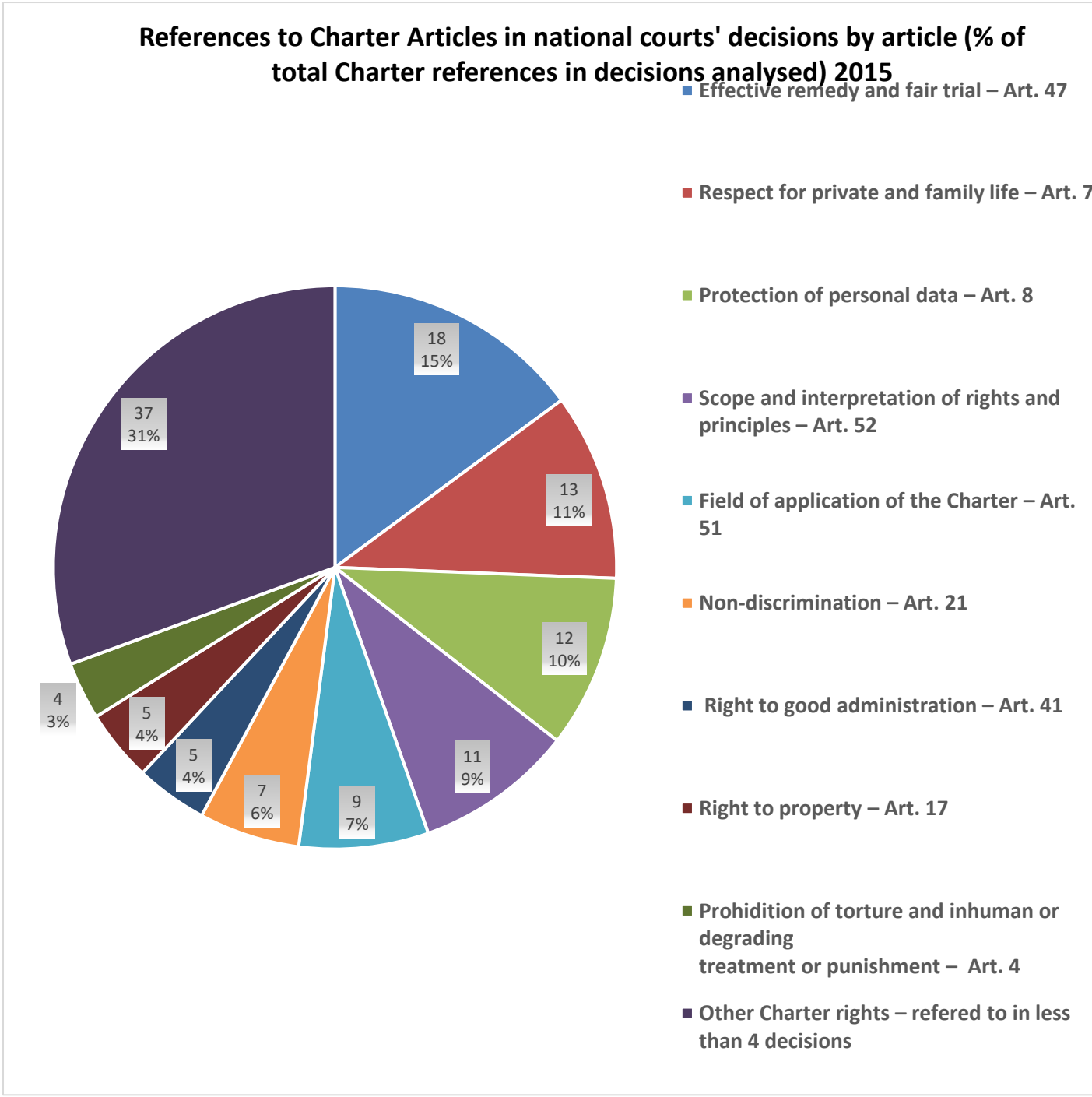
When focusing on the different articles of the Charter referred to in cases before the EU Courts the articles that featured prominently were the ones on the right to an effective remedy and a fair trial, the right to good administration and the scope and interpretation of rights and principles.



Source: European Commission

Note: The basis for this pie chart is the case law as referred to in Appendix I. The total number of judgments analysed amounted to 167, and the total number of references to different Charter articles amounted to 326, as several judgments referred to more than one article. The percentages were calculated on the basis of these 326 references. The category 'Other rights' refers to all rights for which the percentage amounts to less than 2 %, i.e. less than 8 references.

The rights mostly referred to in decisions of **national courts in 2015** were the right to an effective remedy, the right to private and family life and the right to protection of personal data.

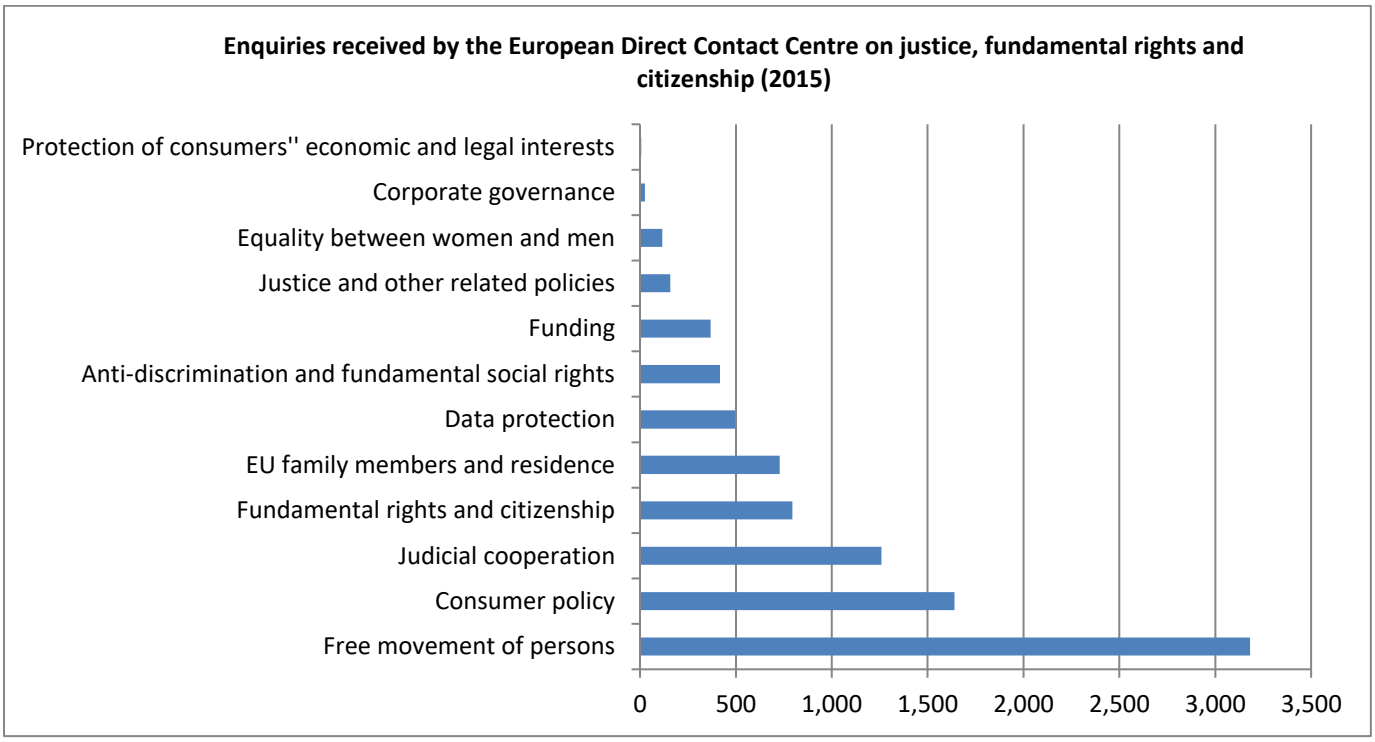


Source: European Union Agency for Fundamental Rights (FRA)

Note: The data for this graph is based on up to three court decisions per EU Member State where the Charter was used in the courts' reasoning (cases where the courts simply refer to the fact that parties invoked the Charter were not taken into account). 68 court decisions from 26 Member States were analysed. Just as last year, no relevant case was identified for Denmark. Also for Croatia no case was communicated. The percentages are based on the total number of references made to the Charter (121), rather than the number of courts' decisions (68), as some courts' decisions contained references to more than one Charter articles.

Overview of enquiries with the Europe Direct Contact Centres

The figures collected by the Europe Direct Contact Centres (EDCC) confirm that there is a high degree of interest among citizens on justice, citizenship and fundamental rights. In 2015, the EDCC replied to 9,199 enquiries from citizens. Most Enquirires concerned topics such as: free movement of persons, consumer policy and judicial cooperation and fundamental rights and citizenship.



Source: European Commission

Methodology and Structure of the Staff Working Document

The Staff Working Document annexed to the Annual Report does not look at the Charter only as a legally binding source of law. It rather aims also to render account, from a broader perspective, of the different ways the Charter was invoked and contributed to the progress made in respecting and promoting fundamental rights in a number of areas during 2015. As a consequence, the Staff Working Document refers to the Charter as a legally binding instrument as well as a policy objective depending on the areas concerned. Furthermore, accounts given under the different chapters of the report vary in breadth as well depth.

Hence, some chapters may show how certain legislative measures are interacting with fundamental rights by promoting them or by finding the right balance in complying with them, including references to the relevant case law of the CJEU. Other chapters contain little of both and/or may concentrate on policy rather than legislative measures. To illustrate the growing impact of the Charter, the Staff Working Document - on the margins of the page where relevant - includes national

court decisions which refer to the Charter, irrespective of whether EU law in those national cases was applicable or not.

Some measures and cases may have an impact on different articles of the Charter. Hence, while a measure and/or case are explained in a more detailed manner under one chapter (the heading of one article) it may be referred to under a different one as well.

The structure of the Staff Working Document follows the six titles of the Charter itself: Dignity, Freedoms, Equality, Solidarity, Citizens' rights and Justice. Each of the six chapters of the Staff Working Document contains the following information on the application of the Charter, where available and relevant:

- Legislation:
    - Examples of EU institutions (proposed or adopted) legislation promoting the Charter rights;
    - Examples of how the EU institutions and the Member States ensured compliance with and have applied the Charter in 2015 within other (proposed or adopted) legislation;
- Policy:
    - Examples of how the EU institutions and the Member States ensured compliance with and have applied the Charter in 2015 within policy areas, e.g. through recommendations and guidelines and best practices;
- Case-law:
    - Relevant jurisprudence of the CJEU;
    - Case-law of national courts referring to the Charter (be it within or outside the scope of EU law);

- Application by Member States:
    - Follow-up: infringement procedures launched by the Commission against Member States for not or wrongly implementing relevant legislation;

- Questions and petitions from the European Parliament, and letters from the general public received in 2015 focusing on main fundamental rights issues;

- Data gathered by the EU Agency for Fundamental Rights throughout 2015.

Dignity

In May 2015 the **European Ombudsman** closed its enquiry concerning the means through which Frontex ensures respect for fundamental rights in joint return operations. Specific fundamental rights safeguards were later included in the **proposal for a Regulation on the European Border and Coast Guard** with a view to ensuring compliance with the specific provisions of the Charter, including the right to dignity and the prohibition of inhuman and degrading treatment.

Council Decisions adopted in November 2015 authorised the Member States to ratify, in the interests of the European Union, the **Protocol of 2014 to the Forced Labour Convention of the International Labour Organisation**. The Protocol obliges the State Parties to prevent the use of forced labour, in particular in the context of trafficking in human beings, to improve the protection of victims, and to provide access to compensation.

Title I

Dignity

Article 1 – Human Dignity

Human dignity, as protected in Article 1 of the Charter, is the basis of all fundamental rights. It guarantees the protection of human beings from being treated as a mere objects by the State or by his/her fellow citizens. It is not only a right in its own but also part of the very substance of each right. Thus it needs to be respected when any of these rights are restricted. All subsequent rights and freedoms under the title Dignity, such as the right to life, and the prohibition of torture and slavery add specific protection against infringements of dignity. They must equally be respected in order to allow enjoyment of other rights and freedoms in the Charter, for example freedom of expression and freedom of association. None of the rights laid down in the Charter may be used to harm the dignity of another person.

Legislation

Human dignity issues arose in several instances in 2015. In the area of migration, in May 2015 the **European Ombudsman** closed[5] its enquiry concerning the means through which Frontex ensures respect for fundamental rights in joint return operations (JRO). The Ombudsman commended Frontex' work to date. However, she called on the agency to ensure that families with children and pregnant women are seated separately from other returnees. Frontex should also promote common rules on the use of restraint, publish more information on JROs, including monitors' reports, and require the Member States to improve complaints procedures. The Ombudsman expressed concern about the refusal of Frontex to establish its own complaints mechanism.[6]

The proposal for a **Regulation on the European Border and Coast Guard**[7] adopted in December 2015, represents an important step forward in answering to the European Ombudsman's recommendations. The proposal which is intended to ensure the implementation of the European integrated border management in line with the principle of shared responsibility, aims at establishing a number of fundamental rights safeguards to ensure compliance with fundamental rights[8], first and foremost the right to human dignity. The proposal envisages, in particular, that the financing of a joint operation or a rapid border intervention may be withdrawn and that such operations and

[5] Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2014/MHZ concerning the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), available at: http://www.ombudsman.europa.eu//cases/decision.faces/en/59740/html.bookmark

[6] See below Article 43

[7] Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC, COM (2015) 671, 15.12.2015, available at: http://eur-lex.europa.eu/procedure/EN/2015_310

[8] See also below Articles 4 and 19

interventions may be suspended or terminated in case of a breach of fundamental rights. A Fundamental Rights Officer shall have the task to monitor the respect of fundamental rights by the Agency, and a complaint mechanism will be available to any person who considers him or herself to have been subject of a breach of fundamental rights during activities carried out by the Agency, or any third party intervener. Finally, it is envisaged that the Agency shall draw up a Fundamental Rights Strategy aimed at guaranteeing the protection of fundamental rights in the performance of its tasks, including a specific focus on persons in need of international protection and other persons in a particularly vulnerable situation. Codes of Conduct to be developed by the Agency will ensure respect for fundamental rights in all border control and return operations.

Policy

On 18 March 2015, a new international framework, **the Sendai Framework for Disaster Risk Reduction 2015-2030**[9], was agreed and signed by 187 UN Member States in Sendai, Japan. The EU has taken a leading role in building a robust, ambitious and enhanced framework. The Commission played a cooperation and coordination role in the process, organising regular coordination meetings with Member States and preparing common positions.

The new framework outlines seven global 'qualitative' targets to be achieved over the next 15 years including a substantial reduction in global disaster mortality, a substantial reduction in numbers of affected people, a reduction in economic losses in relation to global GDP, a substantial reduction in disaster damage to critical infrastructure and disruption of basic services (including health and education facilities), an increase in the number of countries with national and local disaster risk reduction strategies by 2020, enhanced international cooperation and increased access to multi-hazard early warning systems and disaster risk information and assessments.

The EU has strongly supported a framework addressing vulnerabilities and needs, harnessing the potential of civil society and integrating gender, age, and disabilities into disaster risk management. The actions ensure compliance with the principles of dignity and equality recognised under the Charter.

The implementation of the **EU Aid Volunteers initiative** started in January 2015 aiming at a first deployment of volunteers in early 2016. The EU Aid Volunteers initiative is based on Regulation (EU) No 375/2014 establishing the European Voluntary Humanitarian Aid Corps ("EU Aid Volunteers initiative")[10]. The objective is to contribute to strengthening the Union's capacity to provide needs-based humanitarian aid and to strengthening the capacity and resilience of vulnerable or disaster-affected communities in third countries, while giving the European citizens an opportunity to be involved in humanitarian action in third countries.

[9] Sendai Framework for Disaster Risk Reduction 2015-2030 (Sendai Framework), available at: http://www.unisdr.org/we/coordinate/sendai-framework

[10] Regulation (EU) No 375/2014 of the European Parliament and of the Council of 3 April 2014 establishing the European Voluntary Humanitarian Aid Corps ('EU Aid Volunteers initiative'), OJ L 122, 24.4.2014, p. 1.

The initiative aims at preventing and alleviating human suffering and maintaining human dignity, in line with Article 1 of the Charter. The actions under the initiative, namely the certification of sending and hosting organisations and deployment of volunteers, ensure equal opportunities and non-discrimination in the identification and selection process, in compliance with the principle of equality (Art. 20 and 21 of the Charter).

Finally, in the field of migration, the Commission provided **guidelines for the Member States on the obligation to take fingerprints**[11], setting out best practices to follow in order to ensure that the obligations under the Eurodac Regulation[12] are fulfilled in line with the provisions of the Charter. In particular, the guidance highlights the legal parameters of using any necessary force and detention in cases where third-country nationals refuse to have their fingerprints taken and stresses the need for Member States to have full regard to persons' dignity and physical integrity.

Application by Member States

In 2014 the Commission had identified a possible violation of fundamental rights in a temporary detention centre for irregular migrants, which was confirmed by the Court of Auditors. Rental costs for the centre had been included in a national programme under the External Borders Fund and the Commission had not accepted the corresponding costs when the programme closed. The Court of Auditors found that the Member State had not complied with the prohibition of degrading treatment and the principle of human dignity due to the bad conditions in which irregular migrants were detained. During 2015, the corresponding financial corrections were effectively implemented and accepted by the Member State concerned.

Questions from Members of the European Parliament

In March and April 2015, Members of the European Parliament contacted the Commission regarding the approved UK "*Human Fertilisation and Embryology (Mitochondrial Donation) Regulations*[13]". The regulations allow a new technique, by means of which the resulting embryo receives the mitochondrial DNA from a third egg donor. Members of the European Parliament put forward, among others, that the regulations are in breach of the EU Charter of Fundamental Rights, Articles 1, 2, 3 and 21. In its replies, the Commission indicated that by allowing the mitochondrial transfer procedures, the UK does not implement EU law, in particular Directive 2001/20 on clinical trials, and therefore Charter does not apply.

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[11] Commission Staff Working Document on Implementation of the Eurodac Regulation as regards the obligation to take fingerprints, SWD(2015) 150 final, 27.5.2015

[12] Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 180, 29.6.2013, p. 1.

[13] Regulation 2015 No. 572.

Article 2 – Right to life

According to Article 2 everyone has the right to life and no one shall be condemned to the death penalty, or executed.

The European Court of Human Rights has ruled since 1989 that the exposure to the pervasive and growing fear of execution - the so called "death row phenomenon" – was in violation of the European Convention on Human Rights. The ECtHR also held that the implementation of the death penalty could be considered inhuman and degrading and, as such, contrary to Article 3 of the European Convention on Human Rights.[14]

In a press interview of 28 April 2015 Hungarian Prime Minister Orbán launched a debate on the reintroduction of the death penalty. This led to strong criticism from EU institutions, including by President Juncker, FVP Timmermans as well as by the President of the European Parliament, Martin Schulz.

On 30 April 2015, President Juncker declared his opposition to the death penalty and recalled that the Charter of Fundamental Rights of the European Union prohibits the death penalty.[15] First Vice President Timmermans declared on 19 May 2015 that there is no doubt that the reintroduction of capital punishment would be contrary to the EU's fundamental values. A reintroduction of the death penalty by a Member State would therefore lead to the application of Article 7 TEU. The mechanisms of Article 7 TEU relate to the values referred to in Article 2 TEU, including human dignity and respect for human rights.[16]

The Commission noted that Hungary had in the meantime clarified that it had no intention to introduce the death penalty. Accordingly, no legal action was required by the Commission at this stage.

In the field of migration, the budget of the **Joint Operation Triton**, launched off the coast of Italy on 1 November 2014, was tripled and the new Triton Operational Plan, agreed between Frontex and Italy and presented on 27 May 2015[17], expanded both the number of deployed assets and the geographical scope of the operation, in order to allow Frontex to fulfil its dual role of coordinating operational border support to Member States under pressure and helping to save the lives of migrants at sea, thus contributing directly to the respect of the right to life.

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[14] ECtHR, judgement of 2 March 2010 in case *Al-Saadoon & Mufdhi v. the United Kingdom,* application no. 61498/08.

[15] Available at: http://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I102614

[16] Available at: http://europa.eu/rapid/press-release_SPEECH-15-5010_en.htm

[17] Available at: http://frontex.europa.eu/news/frontex-expands-its-joint-operation-triton-udpbHP

Article 3 – Right to the integrity of the person

The right to physical and mental integrity of the person (Article 3 (1) of the Charter) on the one hand protects from infringements by public authorities. On the other hand it also puts them under an obligation to promote such protection, e.g. by concrete legislation.

Legislation

The **Victims' Rights Directive**[18] entered into application in the Member States on 16 November 2015. It lays down a set of rights for victims of crime, including a right to protection during the criminal proceedings and trial. The Directive requires inter alia that the national authorities apply specific protection measures relevant to victims' individual needs.[19]

The new Directive replaces the 2001 Framework Decision and reaffirms the existing minimum on the rights to access information, support, protection and basic procedural rights in criminal proceedings. However, the Directive brings significant added value compared to the previous legal framework since it contains more concrete and comprehensive rights for victims and clearer obligations for Member States.

New rights and obligations:

• Access to victim support – Member States must ensure access for victims and their family members to general victim support and specialist support, in accordance with their needs. The Directive specifies the basic level of services that need to be provided. Support is not dependent on the victim having reported the crime. Member States must facilitate referrals from police to victim support organisations.

• Specialist support services must as a minimum provide shelters and targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender based violence and victims of violence in close relationships, including trauma support and counselling.

• Individual assessment to identify vulnerability and special protection measures – All victims will be individually assessed to determine whether they are vulnerable to secondary or repeat victimisation or intimidation during criminal proceedings. If they have specific needs, a whole range of special measures will be put in place to protect them.

[18] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, p. 57.

[19] See below Article 48.

The Commission has proposed[20] the EU accession to the Council of Europe's Istanbul Convention, which offers a comprehensive approach to combatting violence against women, and which could strengthen the EU's efforts in promoting its fundamental values of human rights and equality between men and women. The European Commission published a roadmap on a possible EU accession to the Convention in October 2015, as a first, concrete step.[21]

Case-law

The ECtHR judgment in case of *Y v. Slovenia*[22] clarified the scope of the state's obligations regarding protection of victims during the criminal proceedings. The case concerned a young woman's complaint about the criminal proceedings brought against a family friend, whom she accused of repeatedly sexually assaulting her while she was a minor, alleging that the proceedings were excessively long and traumatic for her. The ECtHR found that long breaks between the hearings in cases involving charges on sexual assault against a minor were not justified and that this amounted to inhuman and degrading treatment of the victim.

The Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) and of Article 8 (right to respect for private and family life) of the European Convention on Human Rights. The Court found that the Slovenian authorities had failed to protect the alleged victim's personal integrity during the criminal investigation and trial. The Court noted that the proceedings had been marked by long periods of complete inactivity. The police had submitted an incident report of Y.'s complaint to the prosecutor only a full year after their investigation had been concluded and upon being urged by the prosecutor to do so. Also, they should have prevented the alleged assailant from using offensive and humiliating remarks while cross-examining her during the trial.

Rulings of Maltese courts

In Malta the Charter has been referred to by national courts in order to argue for the award of compensation in contexts where an entitlement for such compensation is not established by national law. In a 2015 decision, the Civil Court explicitly excluded the applicability of the Charter, but mentioned that lower courts have used Article 3 of the Charter on the right to the integrity of the person – for which there is no corresponding provision in the Maltese constitution - to argue for the possibility of claiming moral damages. (Malta, Civil Court, case no 33/2014 of 15 January 2015)

[20] COM(2016)111 final and COM(2016)109 final: http://eur-lex.europa.eu/legal-content/EN/HIS/?uri=COM:2016:111:FIN and http://eur-lex.europa.eu/legal-content/EN/HIS/?uri=COM:2016:109:FIN

[21] Available at: http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_just_010_istanbul_convention_en.pdf

[22] ECtHR, judgment of 28 May 2015 in case of *Y v. Slovenia*, application no. 41107/10.

Article 4 – Prohibition of torture and inhuman or degrading treatment or punishment

Article 4 of the Charter provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. The respect of Article 4 requires particular vigilance in the field of border controls, immigration and asylum issues.

Legislation

The **proposal for a Regulation on the European Border and Coast Guard** adopted in December 2015, intended to ensure the implementation of the European integrated border management in line with the principle of shared responsibility, aims at establishing a number of fundamental rights safeguards to ensure compliance with fundamental rights, including the prohibition of torture and degrading treatment.[23]

Policy

In the field of return, a **Return Handbook**[24] was published by the European Commission to accompany the **Action Plan on return**[25] adopted in September 2015, with a view to providing concrete guidance for national authorities in charge of return and contains detailed common guidelines, best practices and recommendations on how to ensure that any return operation fully complies with fundamental rights.[26] This includes detailed guidelines on standards to be taken into account whenever Member States impose detention for the purpose of removal, in order to ensure detention conditions that comply with the prohibition of inhuman or degrading treatment under Article 4 of the Charter.

Following the release, in December 2014, of the "Study of the Central Intelligence Agency's (CIA) detention and interrogation program" by the US Senate Select Committee on Intelligence, the European Parliament adopted on 11 February 2015 a resolution "on the US Senate report on the use

[23] See above Article 1 and below Article 19.

[24] Commission recommendation establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks, C(2015) 6250 final, 1.10.2015, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/commission_recommendation_establishing_a_return_handbook_for_member_states_competent_authorities_to_deal_with_return_related_tasks_en.pdf.

[25] Communication from the Commission to the European Parliament and to the Council – EU Action Plan on return, COM(2015) 453 final, 9.9.2015, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication_from_the_ec_to_ep_and_council_-_eu_action_plan_on_return_en.pdf.

[26] See also below Article 19.

of torture by the CIA" [27]. The Parliament welcomed the publication of the report, recalled its absolute condemnation of torture, called on Member States to investigate fully recent allegations that illegal rendition, detention and torture took place on their territory and to prosecute those responsible and instructed several of its committees to resume its inquiry on 'alleged transportation and illegal detention of prisoners in European countries by the CIA' and to report to plenary within a year.

Article 5 – Prohibition of slavery and forced labour

Slavery violates human dignity. Trafficking in human beings is one form of slavery. The Charter explicitly prohibits trafficking in human beings in Article 5 (3). Both slavery and forced labour are the forms of exploitation covered by the definition of trafficking in human beings as stipulated in Article 2 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. Preventing and combating it is a priority for the Union and the Member States.

Policy

As part of the **EU's strategy on eradicating trafficking in human beings**, the European Commission organised, in cooperation with the Luxembourg Presidency of the Council of the European Union, a **high-level conference to mark the Ninth EU Anti-Trafficking Day** on 20 October 2015. The conference focused on the implementation of the ambitious EU legal and policy framework to address trafficking in human beings that is anchored in human rights, victims centred, gender-specific and child sensitive. The EU Anti trafficking Day - instituted for 18th October in 2007 - serves as an occasion to reinvigorate Europe-wide commitment for eradicating trafficking in human beings.

On the occasion of the Ninth EU Anti-trafficking Day, the Commission published a series of relevant studies including the **Study on case law on trafficking in human beings for the purpose of labour exploitation**, the **Study on prevention initiatives on trafficking in human beings** and the **Study on high risk groups focusing on children**.[28] Furthermore, on the same occasion, the European Union Agency for Fundamental Rights (FRA), in close cooperation with the European Commission, published the report "**Guardianship systems for children deprived of parental care in the European Union**", which explores the key features of guardianship systems across all EU Member States that have been established to meet the needs of children without parental care, including those at risk of becoming victims of human trafficking or other forms of violence and exploitation. This comparative report complements the handbook on guardianship for children deprived of parental care, which is a deliverable of the EU anti-trafficking strategy.[29]

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[27]: European Parliament resolution of 11 February 2015 on the US Senate report on the use of torture by the CIA , available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP8-TA-2015-0031%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN

[28] Available at: https://ec.europa.eu/anti-trafficking/publications/_en?solrsort=ds_field_publication_date%20desc

[29] Available at: https://ec.europa.eu/anti-trafficking/node/4085

Council Decisions authorizing Member States to ratify, in the interests of the European Union, the **Protocol of 2014 to the Forced Labour Convention of the International Labour Organisation** (ILO) were **adopted in November 2015**.[30] The Protocol was adopted by the assembly of the ILO, together with a Recommendation on Forced Labour, in June 2014. Countries ratifying the ILO Protocol agree to **prevent the use of forced labour, in particular in the context of trafficking in human beings**, to **improve the protection of victims** ensuring their identification, release, protection, recovery and rehabilitation, and to **provide access to remedies, including compensation**, to all victims and to ensure that competent authorities are entitled not to prosecute them for unlawful activities which they have been compelled to commit.

Wide implementation of the Protocol to the Forced Labour Convention is of particular relevance for the EU, which is committed to promoting human rights and decent work conditions and to **eradicating trafficking in human beings**, both internally and in its external relations. Of particular importance in the context of the Protocol is also the commitment of the EU to the **promotion of the protection of the rights of the child** and **gender equality**, notably as children and women are particularly vulnerable to some forms of forced labour. Strengthening victims' rights in the EU has also been a strategic priority of the Commission over the past few years. The horizontal Victims' Rights Directive[31] ensures that victims of crime benefit from common minimum standards of rights during police investigations and court proceedings. The Protocol should be seen as part of this work and its ratification by EU Member States sends an important signal on the coherence of the EU's policy in addressing forced labour and trafficking in human beings in a more effective, coordinated and coherent manner.

Another key instrument in this area is the **ILO Domestic Workers Convention (Convention No. 189)**[32], adopted in 2011. Two years after the adoption of the Council Decision[33] authorising Member States to ratify this Convention, the Commission invited EU Member States on 15 December 2015 for an expert meeting to exchange views on national experiences, and discuss with ILO and Commission experts on the legal implications of the Convention and how to best implement it. A large consensus emerged among EU Member States during this meeting, on the need to protect domestic workers, predominantly women, and to improve their working conditions. Six EU Member States have ratified

[30] Council Decision (EU) 2015/2037 of 10 November 2015 authorising Member States to ratify, in the interests of the European Union, the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation with regard to matters relating to social policy, OJ L 298, 14.11.2015, p. 23 and Council Decision (EU) 2015/2071 of 10 November 2015 authorising Member States to ratify, in the interests of the European Union, the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation as regards Articles 1 to 4 of the Protocol with regard to matters relating to judicial cooperation in criminal matters, OJ L 301, 18.11.2015, p. 47.

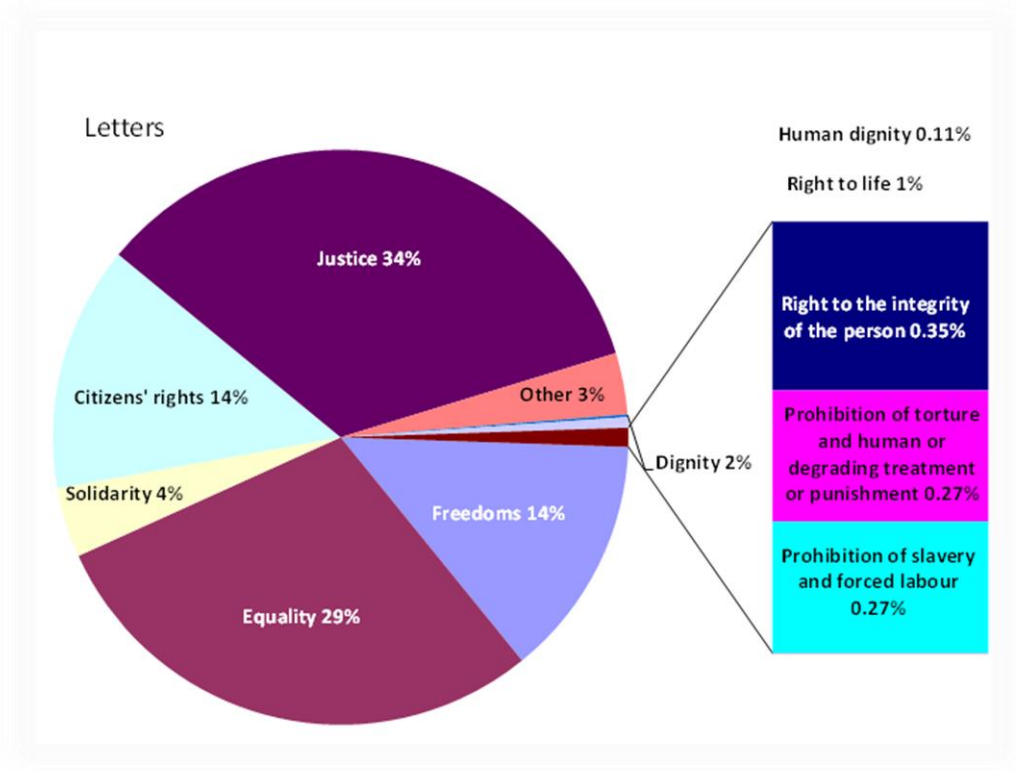
[31] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, p. 57.

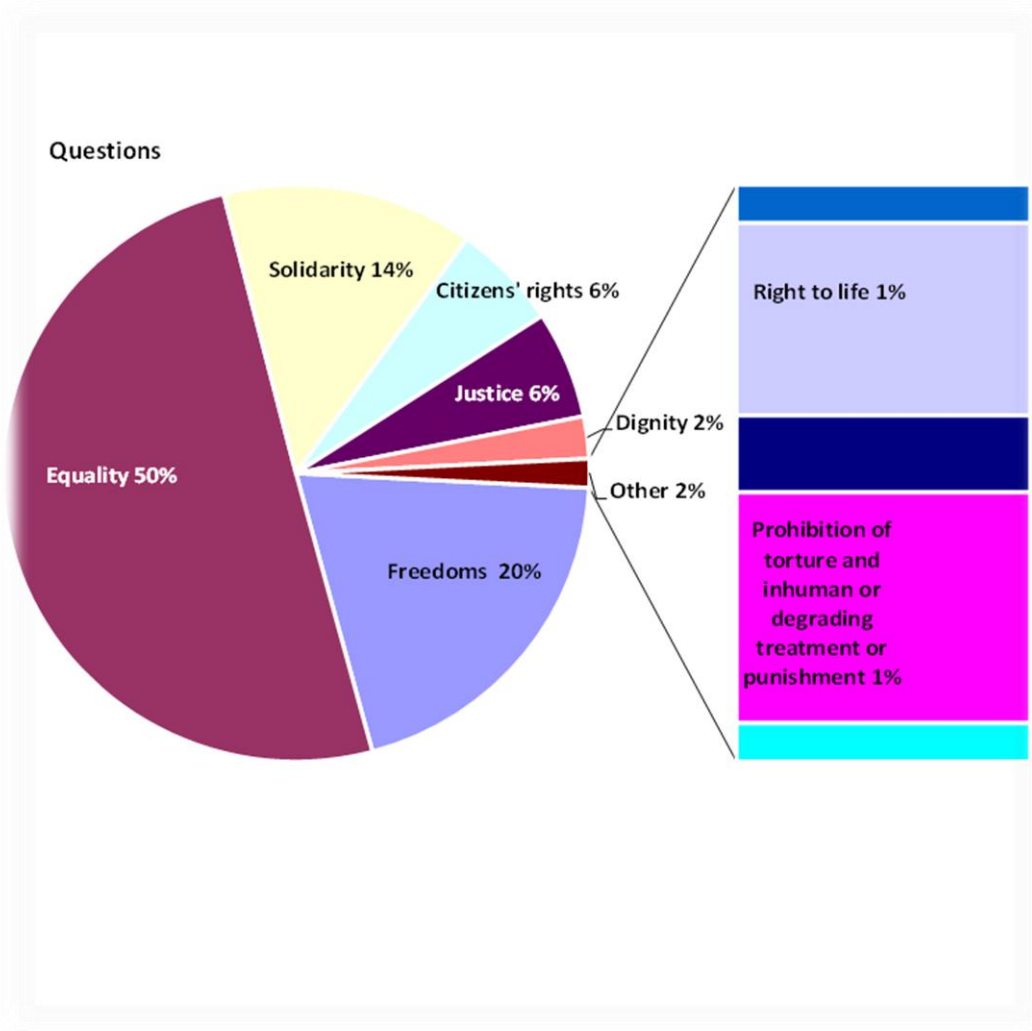
[32] Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189

[33]Council Decision 2014/51/EU of 28 January 2014 authorising Member States to ratify, in the interests of the European Union, the Convention concerning decent work for domestic workers, 2011, of the International Labour Organisation (Convention No 189), OJ L 32, 1.2.2014, p. 32.

this Convention and many Member States have reported continuing exchanges with their social partners and stakeholders to advance ratification. The ratification by all EU Member States would complement the EU acquis on issues such as on working conditions and contribute to the EU efforts to promote ratification and application of up to date ILO conventions throughout the world.

Another relevant policy initiative was the adoption, in the area of migration, of the **EU Action Plan against migrant smuggling** on 27 May 2015. The plan recognises fundamental rights protection as one of its guiding principles and contains several elements that show the Commission's commitment on this point. Among the actions mentioned in the Action Plan, a Commission proposal for a revision of the existing EU legal framework on migrant smuggling is expected by the end of 2016. The purpose of the review of the legislation is, among others, to reinforce the existing penal framework while avoiding punishment of those individuals who provide assistance for humanitarian reasons to migrants in distress. The Commission also announced the revision of Directive 2004/81/EC on residence permits issued to victims of trafficking in human beings and to smuggled migrants who cooperate with authorities with the aim to improve protection and assistance to the victims of such forms of crimes. Finally, the Action Plan envisages a specific role for the EU Fundamental Rights Agency in the implementation of this policy framework as regards in particular the development of the fundamental rights dimension, specifically in the field of protection of smuggled migrants, and as regards EU-wide mapping of training needs in this field.




Questions
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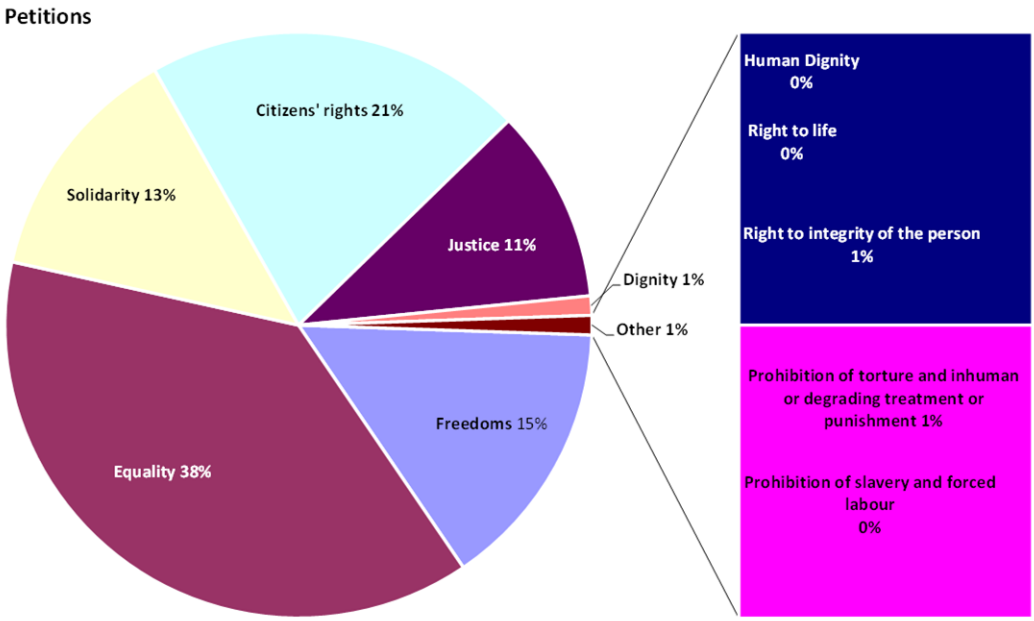
Justice 6%
Dignity 2%
Other 2%
Equality 50%
Freedoms 20%
Right to life 1%
Prohibition of torture and inhuman or degrading treatment or punishment 1%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Right to life 0%
Right to integrity of the person 1%
Prohibition of torture and inhuman or degrading treatment or punishment 1%
Prohibition of slavery and forced labour 0%

Title II

Freedoms

In the field of data protection, the Council reached in 2015 an agreement with the European Parliament on the **General Data Protection Regulation and a Data Protection Directive for Police and criminal justice authorities**.

The Commission also continued to **negotiate with its U.S. counterparts on the Data Protection Umbrella agreement** in order to protect personal data transferred between the EU and the U.S. for law enforcement purposes as well as the conditions of a safe harbour successor regime as regards data transfers to the US for commercial purposes. The latter negotiations became even more topical after the CJEU in the **Max Schrems case** annulled the Commission's adequacy decision of 2000.

The **European Agenda for Migration** and its subsequent implementation packages are of direct relevance to the enjoyment of the fundamental right to asylum. The Commission activated, for the first time in 2015, the emergency mechanism foreseen in the Treaties proposing a temporary distribution mechanism for persons in clear need of international protection within the EU. The Commission also adopted a proposal for a Regulation establishing a Crisis Relocation Mechanism and amending the Dublin III Regulation, and a proposal for a Regulation establishing an EU common list of safe countries of origin. Finally, as part of the immediate action to assist frontline Member States which are facing disproportionate migratory pressures at the EU’s external borders, the European Commission proposed to develop the so-called "hotspot approach".

In 2015, the Commission initiated several infringement decisions for failing to fully implement legislation making up the Common European Asylum System.

Article 6 – Right to liberty and security

Article 6 of the Charter guarantees the right of everyone to liberty and security of person. These rights correspond to the rights guaranteed in Article 5 of the ECHR. This means in particular that a person's liberty can only be limited under strict legal conditions.

Case law

In the *Lanigan* case[34], the CJEU referred to the fundamental right to liberty and security in the light of implementation of the European Arrest Warrant. Here the Court held that the expiry of the time-limits to take a decision on the execution of a European arrest warrant did not preclude, in itself, the continued holding of the requested person in custody. However, the Court noted that in accordance with the fundamental right to liberty and security the requested person must be released, together with measures necessary to prevent him from absconding, if the duration of the custody is excessive.

Article 7 – Respect for private and family life

Article 7 of the Charter guarantees the right of everyone to respect of their private and family life as well as home and communications.
The right to **private life** includes the protection of privacy in relation to any information about a person. Where legislation, policy or case law refer to this right in connection to the protection of personal data, this report will refer to them under Article 8 below.

Legislation

In 2015, the **Directive on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries**[35] was adopted. Amongst others the Directive clarifies when and how third country family members of EU citizens can receive protection with a view to ensuring the effectiveness of the right to consular protection[36], and of the right to respect for private and family life recognised in Article 7 of the Charter.[37]

Case Law

In the case *Deutsche Bahn*[38] the CJEU reviewed the investigative powers of the Commission in the context of enforcing EU competition law. The Court ruled on whether an inspection carried out by the Commission without prior judicial authorisation constituted an infringement of the right to the inviolability of the private premises, as laid down by Article 7 of the Charter. The Court, after

[34] CJEU judgement of 16 July 2015 in the Case C-237/15 *PPU Minister for Justice and Equality v Francis Lanigan*.

[35]Council Directive 2015/637/EU on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC, OJ L 106, 20.04.2015, p. 1.

[36] See below Article 46.

[37] See above Article 7.

[38] CJEU judgment of 18 June 2015 in the Case C-583/13 P, *Deutsche Bahn and Others v Commission*.

reiterating its case law that in principle Article 7 may also protect businesses premises, concluded that there was no such infringement in this case, given that the Commission's powers of investigation were strictly defined and there was an effective legal remedy *ex post*, which constituted a fundamental guarantee in order to ensure the compatibility of the inspection measure in question with Article 7 of the Charter as well as Article 8 of the ECHR. The later had already been ruled upon by the ECtHR.[3940]

As regards the **right to respect for family life**, and in particular the right to **family reunification**, the Court of Justice ruled in *K and A*[41] that the right to family reunification as guaranteed by EU law to **third country nationals residing lawfully in the territory of the Member States** does not prevent Member States from requiring third country nationals **to pass a civic integration examination prior to family reunification**, provided that the exercise of the right to reunification is not, as a result of this examination, made impossible or excessively difficult. Such an assessment should take into account specific individual circumstances, such as the age, level of education, economic situation or health of the applicants, as well as the cost of the examination. It is on those grounds that the Court found that the national provisions at stake, in so far as they did not consider the special circumstances objectively forming an obstacle to the applicants passing the examination and in so far as they set the fees relating to such an examination at too high a level, could be regarded as making the exercise of the right to family reunification impossible or excessively difficult.

Ruling of the Lithuanian Supreme Court

In Lithuania the Supreme Court interpreted national law in line with the Charter against the background of the EU data protection directive (Directive 95/46). The case concerned a legal dispute between two joint owners of a house. One of the owners had decided to install surveillance cameras on his part of the building without asking the permission of the second owner, who brought a case against the co-owner seeking the removal of the cameras. The Court made reference to the respect for private and family life (Article 7) and the protection of personal data (Article 8), emphasising that the exception of "purely" private use of data laid down in the EU directive and the Lithuanian law implementing it should be interpreted narrowly and decided in favour of the claimant. (Lithuania, Supreme Court, case no 3K-3-430-415/2015 decision of 26 June 2015)

[39] ECtHR judgment of 2 October 2014 in the Case *Delta Pekárny a.s. v. the Czech Republic*, application no. 97/11, paragraphs 83, 87 and 92.

[40] The CJEU in this case, however annulled two Commission inspections decisions in so far as they breached the complainants' rights to defence, see below Article 48.

[41] CJEU judgement of 9 July 2015 in the Case C‑153/14, *Minister van Buitenlandse Zaken v K, A*.

Ruling of the Portuguese Constitutional Court

In Portugal, the President of the Republic made use of the possibility provided by the Constitution to seek an ex-ante evaluation from the Constitutional Court of the constitutionality of a provision in a Parliamentary Decree that had been passed by the Parliament and submitted to him for promulgation. The decree was about the Republic's Information System that would allow officials of the Security Information Service and the Strategic Defence Information Service, under determined circumstances, access to banking and tax data, data on communication traffic, locality or other data. The Court declared the relevant provision unconstitutional referring amongst others to Article 7 of the Charter (respect for private and family life) and Article 8 of the Charter (protection of personal data). (Portugal, Constitutional Court, case no 773/15, judgement no 403/2015 of 27 August 2015).

Article 8 – Protection of personal data

The fundamental right of everyone to the protection of personal data is explicitly recognised by Article 8 of the Charter. It is furthermore stated in Article 16 of the Treaty on the Functioning of the European Union. It aims at the protection of an individual's free decision on the use of his or her own personal data. This right is gaining increasing importance in view of the explosion of the collection, use and distribution of personal data within our digital society.

Legislation

The significant advancements of the data reform package constitute the cornerstone of EU legislation efforts on the protection of personal data in 2015, thereby further substantiating the fundamental right to protection of personal data. Already in January 2012 the Commission had published its proposals for a **General Data Protection Regulation** and a **Data Protection Directive for Police and criminal justice authorities**.[42] These measures are aimed at replacing the existing 1995 Data Protection Directive 95/46/EC and the Framework Decision 2008/977/JHA. This package is a key element for the completion of the Digital Single Market, and for the protection of the fundamental rights of individuals in the face of rapid technological change. The European Parliament had adopted

[42] Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) , COM(2012) 11 final, 25.1.2012, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012PC0011&from=EN and Proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, COM/2012/010 final, 25.1.2012, available at: http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_10_en.pdf.

its position in first reading on 12 March 2014, confirming its strong support for the Commission's data protection reform.[43] On 15 December 2015 the Council reached an agreement with the European Parliament on the Regulation and on the Police Directive thereby meeting the objective set by the European Council and by the political guidelines of President *Juncker*.[44] Currently work is ongoing to prepare the agreed texts for the formal adoption by the Parliament and the Council. The Regulation and the Police Directive will become applicable two years after publication. The new EU data protection rules will apply not only to European companies, but also to foreign companies offering goods and services to EU citizens, or monitoring their behaviour. In other words, the same rules will apply to all companies operating in the EU regardless of where they come from. For example, start-ups from other world regions will have to play by the same rules as start-ups from Europe.

Further legislative activities of the EU relevant for fundamental rights to private life (Article 7) as well as for the protection of personal data (Article 8 of the Charter) were aimed at furthering concrete EU policies while at the same maintaining a high level of protection of these fundamental rights. Such policies in particular concerned public or policy interests (e.g. in the field of **fisheries, external border control, tax information or insolvency**) as well as the advancement of digital technologies.

Under the Common Fisheries Policy, the Commission submitted two proposals for regulations foreseeing the collection of data in the fisheries sector. The **Proposal for a Regulation on a framework for the collection, management and use of data in the fisheries sector**[45] aims to be the main legal instrument by which Member States are to provide any data in the fisheries sector necessary to data users (end-users and other interested parties), whatever the source of the legal obligation under which data are collected, unless other legal instruments already provide for the availability of the data (e.g. most statistical regulations). In this context, no generic measures should, *a priori,* restrict the access to data, whether by scientific users or by other interested parties. However, where the protection of personal data is at stake, the proposal would ensures that appropriate safeguards be taken by the Member States. Thus, a higher level of aggregation or anonymisation of data must be achieved, if the latter include information relating to identified or identifiable natural persons.

[43] European Parliament legislative resolution of 12 March 2014 on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (COM(2012)0011 – C7-0025/2012 – 2012/0011(COD)), P7_TA(2014)0212, available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0212+0+DOC+XML+V0//EN

[44] See European Commission press release *Agreement on Commission's EU data protection reform will boost Digital Single Market* , available at: http://europa.eu/rapid/press-release_IP-15-6321_en.htm.

[45] Proposal for a Regulation of the European Parliament and of the Council concerning the establishment of a Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy (recast), COM(2015)_294 final, 18.6.2015 – 2015/0133 (COD), available at http://eur-lex.europa.eu/procedure/EN/2015_133 .

The proposal for a **regulation on the sustainable management of fishing fleets**[46] aims at allowing the Union to better monitor its external fishing fleet. It follows upon the new **Common Fisheries Policy**, which is enshrined in the **'Basic Regulation'**.[47] The latter promotes, amongst others, European Union fishing activities outside Union waters that shall be sustainable and based on the same principles and standards as those applicable under Union law in European waters. One of the core principles of good governance promoted by the Basic Regulation in its Article 3, is transparency of data. In the light of the above, Article 34 of the Proposal aims to institute a Union fishing authorisation register which gathers 'all information' related to the fishing authorisations issued under the Regulation. It will be used for data and information exchange between the Commission and the Member States. Article 34 aims to provide for both a public and a 'secure' part. The first should 'at least' contain the name and flag of the vessel, the type of authorisation, as well as the time and place of activity. The second, on the other hand, would include, among others, personal data related to the operator and the captain (name, address, contact details, nationality), which are considered necessary to establish responsibilities pursuant to existing legislation (mostly the Control Regulation (EC) No 1224/2009 and the IUU Regulation (EC) No 1005/2008). Where the register includes personal data, its processing should comply with Regulation (EC) No 45/2001, Directive 95/46 and implementing national rules, as set out in Article 36 of the Proposal.

In the area of external border controls the European Commission's proposal for a **Regulation amending Regulation No 562/2006 (EC) as regards the reinforcement of checks against relevant databases at external borders (Schengen Borders Code)**[48] intends to oblige Member States to carry out systematic checks on persons enjoying the right of free movement under Union law when they cross the external border against databases on lost and stolen documents as well as in order to verify that those persons do not represent a threat to public order and internal security. Since the consultation of databases' functions on the basis of a hit/no-hit basis and the mere consultation of the database is therefore neither registered nor further processed, the respect of the rights to respect of private and family life (Article 7) and to the protection of personal data (Article 8) would be ensured.

Regarding tax transparency, on 18 March 2015 the European Commission adopted a legislative **proposal for a Directive amending Directive 2011/16/EU as part of the Tax Transparency Package**[49]

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[46] Proposal for a Regulation of the European Parliament and of the Council on the sustainable management of fishing fleets, repealing Council Regulation (EC) No 1006/2008, COM(2015)636 final, 10.12.2015, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:636:FIN..

[47] Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354, 28.12.2013, p. 22.

[48] Proposal for a Regulation of the European Parliament and of the Council amending regulation no 562/2006 (ec) as regards the reinforcement of checks against relevant databases at external borders, COM/2015/0670 final, 15.12.2015, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015PC0670

[49] Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, (COM(2015) 135 final), 18.3.2015, available at: http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transparency/com_2015_135_en.pdf

which the Council adopted in December 2015. The purpose of the amendment is to ensure that Directive 2011/16/EU provides for comprehensive and effective administrative co-operation between tax administrations. To this end it envisages mandatory automatic exchange of information regarding advance cross-border rulings and advance pricing arrangements which is a particular type of advance cross border ruling used in the area of transfer pricing. The Directive does not generally concern personal data but, at the same time, contains data protection safeguards that would apply to the limited extent that personal data might be exchanged.

With view to an EU-wide on-line interconnection of national electronic insolvency registers **Regulation (EU) 2015/848 of the European Parliament and of the Council on insolvency proceedings (recast)** was adopted on 20 May 2015. As the Regulation is particularly aimed at promoting the protection of personal data[50] the adopted Regulation contains detailed provisions on data protection in compliance with Directive 95/46/EC and Regulation (EC) No 45/2001.[51] These rules clarify the responsibilities of the Member States and of the Commission with regard to the system of interconnection. Furthermore, the new rules clarify that no personal data relating to data subjects shall be stored in the European e-Justice Portal; all such data shall be stored in the national databases operated by the Member States or other bodies. Consequently, the time of accessibility of personal data via the European e-Justice Portal will correspond to the retention period of the relevant data in the national registers under the respective national laws. In addition, for the purpose of satisfying the requirement of proportionality, the Regulation establishes a regime of conditionality, which Member States may apply in terms of requests on information concerning natural person debtors not pursuing an economic activity.

Furthermore, the Commission's policies respond to issues, which arise in the nexus between financial regulations on the one hand, and data protection and cyber-security/crime issues on the other. Thus, on 23 December 2015, **Directive 2015/2366 on payment services in the internal market**[52] was published in the Official Journal. It opens the EU payment market to new service providers offering more choice for consumers or businesses. Citizens will also be better served as a result of the introduction of a number of requirements to protect their rights, in particular new provisions to better protect the personal data of payers and payees when using payment services but also strict security requirements for the initiation and processing of electronic payments, enhanced consumers' rights as well as better defined out-of-court redress procedures to enforce their rights under the Directive.

Also, on 9 September 2015, the European Parliament and the Council adopted a **Regulation on mutual administrative assistance**[53] in the area of customs and agriculture, which reinforces the

[50] Regulation 2015/848/EU of the European Parliament and of the Council on insolvency proceedings (recast), OJ L 141, 20.05.2015, p.19, recital 83.

[51] In particular in Articles 78-83, recital 84.

[52] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance), OJ L 337, 23.12.2015, p. 35 .

[53] Regulation (EU) 2015/1525 of the European Parliament and of the Council of 9 September 2015 amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member

fundamental right of protection of personal data enshrined in Article 8 of the Charter.[54] The new Regulation strengthens the collaboration between the two bodies currently responsible for supervising data protection in the area: the European Data Protection Supervisor (EDPS) and the Customs Joint Supervisory Authority (CJSA) thereby contributing to improved coherence of their audit recommendations. The new Regulation also clarifies the responsibility for data protection supervision with regard to the technical systems of data exchange (e.g. CIS) established by the Commission on the basis of this Regulation and assigns this responsibility to the EDPS. The Regulation introduces a maximum retention period of ten years for data stored in the CIS, stipulating additionally that in cases where personal data are stored for a period exceeding five years, the EDPS should be informed accordingly. Finally, in order to safeguard the rules governing data protection, specific provisions are introduced on the security of processing.

Finally, the on-going implementation of a **Digital Single Market (DSM)** as envisaged in the Commission's work programme needs to be pointed out in this context. Ensuring a general acceptance of the Digital Single Market requires the citizens' trust and confidence in a new digital environment. This includes strong and efficient protection of fundamental rights online. In this context a number of legislative measures on EU level were initiated and/or adopted to ensure widespread access and use of digital technologies while at the same time guaranteeing a high level of fundamental rights protection, namely of the right to private life and to protection of personal data as enshrined in Articles 7 and 8 of the Charter.

Thus on 25th November 2015 the European Parliament and the Council adopted **rules on the open internet**[55] protecting the right of every individual in the EU to access Internet content without discrimination, following the Commission legislative proposal of 11 September 2013. Recitals of the Regulation explicitly refer to the EU Charter,[56] notably the protection of personal data, but also the freedom of expression and information, the freedom to conduct a business, non-discrimination and consumer protection. For the first time it enshrines the principle of net neutrality into EU law: users will be free to access the content of their choice, they will not be unfairly blocked or slowed down anymore.[57] The Regulation entered into force on 29 November 2015..[58]

States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, OJ L 243, 18.9.2015, p. 1.

[54] See in particular Articles 18a, 18d, 37 and 38.

[55] Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (Text with EEA relevance).

[56] See in particular: Recitals 13 and 33, 80.

[57] Therefore see also: Chapter on Equality below.

[58] Open internet rules will apply from 30 April 2016.

Furthermore, the European Commission has been continuously working on the proposed **Directive on Network and Information Security**.[59] Improving cyber security is a necessary precondition to promote and ensure effective protection of personal data within the meaning of Article 8 of the Charter. The Network and Information Security Directive – proposed by the Commission in 2013 and which moved to the final stages of negotiations between the European Parliament and the Council in 2015 – aims to ensure a high common level of cyber security in the EU, by improving Member States' national cyber security capabilities, by improving cooperation between Member States and between public and private sectors and by requiring companies in critical sectors to adopt risk management practices and report major incidents to the national authorities.

On 23 June 2015, a **European Commission Delegated Regulation on real-time traffic information services** was published.[60] The Delegated Regulation establishes the specifications necessary to ensure accessibility, exchange, re-use and update of road and traffic data in order to support the interoperability, compatibility and continuity for the provision of real-time traffic information services in the European Union. With view to personal data the Regulation requires that where data is to be processed, it should be, irreversibly anonymised where possible. Moreover, it should be processed in accordance with European Union law, e.g. in particular, Directive 95/46/EC and Directive 2002/58/EC as well as with national legislations thereto.

Agreements

In 2015, the Commission continued to negotiate with its **U.S.** counterparts on the **Data Protection Umbrella agreement** in order to protect personal data transferred between the EU and the U.S. for law enforcement purposes as well as the conditions of a **safe harbour successor regime** as regards data transfers to the US for commercial purposes. The latter negotiations became even more topical after the CJEU on 6 October 2015 in its decision in the *Max Schrems*[61] case annulled the Commission's adequacy decision of 2000, on the basis that it contained no findings as to the limitations and safeguards applicable under U.S. law with regard access to transferred data by U.S. public authorities for law enforcement and national security purposes. In this judgment, the CJEU also clarified that the relevant standard is that the third country's legal order and international commitments provide a level of data protection that is "essentially equivalent" to the one prevailing in the EU. Immediately thereafter the Commission as well as the Working Party 29 (EU Member States Data Protection Authorities) [62] issued communications that pointed to alternative tools that in

[59] Proposal for a Directive of the European Parliament and of the Council concerning measures to ensure a high common level of network and information security across the Union, COM(2013) 48 final, 7.2.2013, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52013PC0048.

[60] European Commission Delegated Regulation (EU) 2015/962 of 18 December 2014 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the provision of EU-wide real time traffic information services, OJ L 157, 23.6.2015, p. 21.

[61] C-362/14 *Maximillian Schrems v Data Protection Commission*; see below this section under *"case law"*.

[62] The Article 29 Data Protection Working Party was set up under the Directive 95/46/EC and is composed by a representative of the supervisory authority designated by each EU country; a representative of the authority established for the EU institutions and bodies; a representative of the European Commission. It has advisory status and acts independently.

the meantime could be used for data transfers to the U.S.,[63] namely standard contractual clauses (SCC) and Binding Corporate Rules (BCR). The WP 29 announced that it would assess whether these tools could indeed continue to provide a sufficient legal basis for such transfers and would decide accordingly by 31 January 2016 whether to take enforcement measures to prevent transfers if it deemed SCR and BCR to be deficient in the light of the requirements of the CJEU. In September 2015, the Commission finalised negotiations on the **EU-US Data Protection 'Umbrella Agreement'**. This will ensure data protection safeguards for any transfer of personal data between the EU and the US in any police or judicial cooperation in criminal matters.[64] Under the agreement, if their personal data are transferred to US law enforcement authorities and these data are incorrect or unlawfully processed, EU citizens non-resident in the US their personal data are transferred to US law[65] This constitutes a significant improvement of the situation concerning judicial redress in the US.

Furthermore, in order to fight tax fraud and evasion the European Commission is working with Member States on the implementation of the OECD global standard for **automatic exchange of financial account** information.[66] In this context the Commission was given a mandate in 2014 to negotiate EU level agreements with Andorra, Liechtenstein, Monaco, San Marino and Switzerland for the automatic exchange between these countries and the Member States of financial account information (such as account balances, interest, dividends, and sales proceeds from financial assets). These agreements, most of which were concluded in 2015,[67] contain the necessary data protection safeguards, taking into account that Switzerland's data protection framework has been recognised as adequate, while Liechtenstein applies Directive 95/46/EC[68] as a Member of the EEA. The Agreement with San Marino includes an additional specific annex detailing the data protection rules and safeguards applying to the exchanges of information, as there is no adequacy decision in place with

[63] See: *Communication from the Commission to the European Parliament and the Council on the Transfer of Personal Data from the EU to the United States of America under Directive 95/46/EC following the Judgment by the Court of Justice in Case C-362/14 (Schrems)* available under: http://ec.europa.eu/justice/data-protection/international-transfers/adequacy/files/eu-us_data_flows_communication_final.pdf and *Statement on the implementation of the judgement of the Court of Justice of the European Union of 6 October 2015 in the Maximilian Schrems v Data Protection Commissioner case (C-362-14),* available under: http://ec.europa.eu/justice/data-protection/article-29/press-material/press-release/art29_press_material/2015/20151016_wp29_statement_on_schrems_judgement.pdf .

[64] On 2 February 2016, the European Commission and the US agreed a new framework for transatlantic data flows: the EU-US Privacy Shield. The Commission presented a draft adequacy decision, taking account of the requirements set out in the Schrems ruling, on 29 February 2016.

[65] These rights will be granted to EU citizens in accordance with the US Judicial Redress Act of 2015 (H.R.1428) enacted on 24 February 2016 and due to enter into force 90 days thereafter.

[66] This has started within the EU as from 1 January 2016.

[67] The agreements with Switzerland and Liechtenstein were signed in May and October 2015, respectively. The Agreement with San Marino was signed on 8 December 2015. The Agreement with Andorra has been initialled and is expected to be signed soon. As regards the Agreement with Monaco, the negotiations have been finalised, and the initialling should take place in the first months of 2016.

[68] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281 , 23/11/1995 p.31.

San Marino. The initialled Agreement with Andorra has similar language on data protection to the Agreement with Switzerland, given the adequacy decision adopted by the Commission on its data protection framework. The data protection provisions in the draft Agreement with Monaco follow the model of the San Marino Agreement given the lack of an adequacy decision for this jurisdiction.

Policy

Policy work of the European Commission touching upon the right to protection of personal data in 2015 particularly evolved around new developments in the digital environment.

Thus, in 2015, the Commission continued to work on the **Network and Information Security NIS public-private Platform**. The Platform is part of the Cybersecurity Strategy of the European Union, which calls on the Commission to set up a public-private platform to identify and develop incentives to adopt good cyber security practices and promote the development and the adoption of secure ICT solutions. The adoption of adequate security measures is essential in order to ensure effective protection of personal data within the meaning of Article 8 of the Charter. The NIS Platform met for its 5th Plenary on 27 May 2015, and finalised guidance documents on cyber security risk management approaches and voluntary information sharing.

An industry-led code of conduct working group within the realm of mHealth was established at a first **mHealth stakeholder event**, held at the end of March 2015. The aim of this subgroup is to produce a code of conduct on mobile health apps, covering privacy and security, and possibly to submit it to the Article 29 Working Party for approval. The European Commission is a facilitator in this process. This code of conduct is aimed at increasing citizens' trust in mHealth apps, facilitating compliance with EU data protection rules for industry, and mHealth app developers in particular, and providing a competitive advantage for those who are signatory to the code.

Also, the Commission has in 2015 been working on a **Staff working Document in the field of Internet of Things (IoT)**. Bearing in mind the relevance of new developments in this field for the fundamental rights to a private life and protection of personal data the Commission is analysing the existing EU legislative packages that may apply to IoT (Data protection directive, e-Privacy Directive, Consumers' rights Directive, e-Commerce directive) in order to draw a gap analysis and identify aspects that might need further regulatory intervention. The Working Party set up under Article 29 in its Opinion 8/2014 on Recent Developments on the Internet of Things presented the main data protection risks that lie within the ecosystem of the IoT, and already identified certain risks related to citizen acceptability, notably in terms of data privacy, security, liability, ethics. Apart from the road mapping exercise in the field of IoT, the Commission is taking further the concept of "Charter-friendly alternative" when designing its funding instruments under Horizon 2020.

As regards the European energy policy a **communication on a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy**[69] delineates an Energy Union strategy with five mutually-reinforcing and closely interrelated dimensions designed to bring greater energy

[69] Communication on a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, COM(2015)80 final, 25.2.2015, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:0080:FIN

security, sustainability and competitiveness. The dimensions are directly relevant to the right to private life and the protection of personal data. In developing synergies between the Energy Union and the Digital Single Market agenda, the Commission envisages to propose measures aimed at ensuring privacy protection and cyber-security. The reference to smart technologies in the energy field and to the protection of personal data can also be found in the communication on the Digital Single Market.[70]

New developments with an impact on the right to data protection and privacy are manifested by **Cooperative Intelligent Transport Systems (C-ITS)** which use technologies to allow road vehicles to communicate with other vehicles, with traffic signals and roadside infrastructure as well as with other road users. The systems are also known as vehicle-to-vehicle communications, or vehicle-to-infrastructure communications. A stakeholder platform[71] for the Deployment of Cooperative Intelligent Transport Systems in the European Union (C-ITS Platform) in its first phase, essentially covering the year of 2015 (November 2014 – January 2016), delivered its contribution towards a shared vision on the topic. As C-ITS equipped vehicles are making use of messages that are constantly broadcasting data, including e.g. their speed and location, this could raise potential concern as how to guarantee privacy and data protection in line with Article 8 of the Charter. After various consultations, in particular with the EDPS and privacy experts, the C-ITS platform considers these messages as "personal data" because of their potential of indirect identification of users. Therefore, it has been recommended to use principles laid down by Directive 95/46/EC to process data exchanged with the C-ITS, namely informed consent, vital interests and public interest in cases of lacking (express) consent.

Case Law

The year 2015 saw a number of important decisions by the CJEU concerning the right to protection of personal data. The decision in the case of ***Max Schrems***[72] recalled the EU institutions' and the Member States' authorities' obligations to protect fundamental rights under the Charter when implementing EU law. Here the **CJEU declared the Commission's so-called Safe Harbour Decision invalid**. The latter constituted an adequacy decision under Article 25(6) of the Data Protection Directive.[73] This decision had allowed transfer of personal data to a third country, here the United States, as it found that there was an adequate level of protection by reason of its domestic law or its international commitments by the United States. This adequacy finding and the transfer of personal data to servers in the US by Facebook's Irish subsidiary had been challenged by an individual before

[70] Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A Digital Single Market Strategy for Europe COM(2015)192 final, at p. 14 and the accompanying SWD(2015)100 final, at p. 84 ff. (section on e-energy), available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1447773803386&uri=CELEX:52015DC0192

[71] The C-ITS Platform gathers public and private stakeholders representing public authorities, vehicle manufacturers, suppliers, service providers, telecomm companies etc.

[72] CJEU, judgment of 6 October 2015 in Case C-362/14 *Maximillian Schrems v Data Protection Commission*.

[73] Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281 , 23.11.1995, p. 31.

national courts, in particular in the light of revelations on mass surveillance by intelligence authorities within the US in 2013.

The CJEU found that an adequacy decision was conditional on a finding by the Commission that in the third country concerned there is a level of protection of personal data which, while not necessarily identical, is "essentially equivalent" to that guaranteed within the EU by virtue of the Directive read in the light of the Charter of Fundamental Rights. Regarding specifically the Safe Harbour Decision in question the Court held that it did not contain sufficient findings by the Commission on the limitations as regards access by U.S. public authorities to data transferred under that decision and on the existence of effective legal protection against such interference. In particular, the Court clarified that legislation permitting public authorities to have access on a generalised basis to the content of electronic communications must be regarded as compromising the essence of the fundamental right to respect for private life. Furthermore, the Court confirmed that even where there is an adequacy decision under Article 25(6) of Directive 95/46/EC, the Member States' Data Protection Authorities (DPAs) remain empowered to examine, with complete independence, whether data transfers to a third country comply with the requirements laid down by Directive 95/46/EC, read in the light of Articles 7, 8 and 47 of the Charter of Fundamental Rights. However, the Court also affirmed that only the Court of Justice can declare an EU act, such as a Commission adequacy decision, invalid. Thus, where a claim is lodged with the national supervisory authorities, such as a data protection authority, they may, even where the Commission has adopted a decision finding that a third country affords an adequate level of protection of personal data, examine whether the transfer of a person's data to the third country complies with the requirements of the EU legislation on the protection of that data and, in the same way as the person concerned, bring the matter before the national courts, in order that the national courts make a reference for a preliminary ruling for the purpose of examination of that decision's validity.

In the case of ***Weltimmo***[74], a company formally registered in Slovakia, running a real estate website focused on the Hungarian market, was the data controller of the personal data of advertisers on that website. *Weltimmo* ignored requests for deletion from those advertisers and was therefore fined by the Hungarian DPA. *Weltimmo* complained, arguing that it was established in Slovakia and therefore could not be fined by the Hungarian DPA and under Hungarian law. The CJEU found that the notion of establishment needs to be interpreted in light of the objectives of the Data Protection Directive 95/46/EC. To be established on a territory of a Member State, the real and effective exercise of activity through stable arrangements is enough, notwithstanding the formal place of establishment. In this case, *Weltimmo* had a real and effective exercise of its entire business activity in Hungary. Hence, Hungarian law was applicable and the Hungarian DPA was competent to impose fines.

In its judgment delivered on 16 April 2015, (reference for preliminary ruling in several joined cases including ***Willems***[75]) the Court of Justice ruled that the provisions of Regulation (EC) No 2252/2004[76]

[74] CJEU judgment of 1 October 2015 in Case C-230/14, *Weltimmo*.

[75] CJEU, judgment of 16 April 2015 in joined Cases C-446/12 *W. P. Willems v Burgemeester van Nuth,* C-447/12 *H. J. Kooistra v Burgemeester van Skarsterlân,* C-448/12 *M. Roest v Burgemeester van Amsterdam and* C-449/12 *L. J. A. van Luijk v Burgemeester van Den Haag*.

on standards for security features and biometrics in passports and travel documents issued by Member States, as amended by Regulation (EC) No 444/2009, must be interpreted as meaning that that Regulation is not applicable to identity cards issued by a Member States to its nationals, regardless of the period of validity and the possibility of using them for the purposes of travel outside that State. They must also be interpreted as meaning that they do not require the Member States to guarantee, in their legislation, that biometric data collected and stored in accordance with that regulation will not be collected, processed and used for purposes other than the issue of the passport or travel document, since that is not a matter which falls within the scope of that regulation.

In the case of Ms Smaranda ***Bara***[77] and numerous other Romanian citizens who were self-employed workers (for the purposes of Directive 95/46/EC – data subjects) the Romanian tax authority transmitted data relating to their declared income to the National Health Insurance Fund. The latter then required the payment of arrears of contributions to the health insurance regime. The persons concerned contested, before national courts the lawfulness of that transmission under the Directive. They submitted that their data were used for purposes other than those for which those data had initially been communicated to the tax authority, without their prior explicit consent and without their having previously been informed. Under National Law, public bodies were empowered to transfer personal data to the health insurance funds so that the latter may determine whether an individual qualifies as an insured person. The data concerned the identification of persons (surname, first name, personal identity card number, address) but did not include data relating to income received. The question of the referring court to the CJEU was whether EU law precluded a public administrative body from transferring personal data to another public administrative body for the purpose of their subsequent processing, without the data subjects being informed of that transfer and processing. The CJEU held that the requirement of fair processing of personal data required a public administrative body to inform the data subjects of the fact that their data would be transmitted to another public administrative body for the purpose of their processing by the latter in its capacity as recipient of those data. The Directive expressly required that any restrictions on the requirement to provide information were to be imposed by legislative measures. The Court concluded that the combined reading of Articles 10, 11 and 13 of Directive 95/46/EC (right to information and restrictions) prohibited national measures such as those contested by the applicants which allow transmission of data between public authorities, without the data subjects having been informed of that transfer or processing.

In the case of ***WebMindLicenses***[78], a Hungarian company operating a website providing interactive erotic services was required by the Hungarian tax authority to make a substantial VAT payment in Hungary, following a tax investigation. The authority also imposed a fine on WML and obliged it to pay interests. In its decision the authority had used as evidence data that had secretly been compiled in the course of a parallel criminal investigation. WML challenged the decision, which led to a

[76] Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, OJ L 385, 29.12.2004, p. 1.

[77] CJEU, judgment of 1 October 2015 in Case C-201/14, *Bara and Others*.

[78] CJEU, judgment of 17 December 2015 in Case C-419/14, *WebMindLicenses*.

preliminary ruling request by the national court. Questions raised concerned, *inter alia*, the legality of using, in an administrative (tax) procedure, evidence collected within a criminal procedure, in view of the guarantee of person's fundamental rights to good administration, to an effective remedy, a fair trial and his or her rights of defence, and consequences of breach of a Charter's rights for the validity of the decision, if such breach is established. The CJEU stated that EU law did not preclude using the evidence obtained in the context of a parallel criminal procedure, provided that the obtaining of such evidence and its use did not infringe the rights guaranteed by EU law (and in particular the rights to privacy and protection of personal data, Article 7 and 8 of the Charter). The national court had to assess whether secret gathering of evidences were means of investigation provided for by law and were necessary in the context of the criminal procedure and whether their use by the tax authorities was also authorised by law and necessary. It was also for the national court to verify whether, in accordance with the general principle of observance of the rights of the defence, the person concerned was granted, in the context of the administrative procedure, access to that evidence and was being heard concerning it. If the national court were to find that this was not the case, or that that evidence was obtained or used in breach of Article 7 of the Charter, it would be obliged to disregard that evidence and annul the decision if, as a result, the latter had no basis. That evidence also had to be disregarded if the national court is not empowered to carry out such review.

German legislative proposal

In Germany, a draft law tabled, on mandatory retention of telecommunication metadata and a maximum retention period, set out specifically how the temporary retention by service providers of internet and telephone data that it provided for in order to aid criminal investigations was designed to meet the standards of Articles 7 and 8 of the Charter. (Germany, German Parliament (*Deutscher Bundestag*), Draft Act on Introducing a Mandatory Retention of Telecommunication Metadata and a Maximum Retention Period (*Entwurf eines Gesetzes zur Einführung einer Speicherpflicht und einer Höchstspeicherfrist für Verkehrsdaten*), 9 June 2015)

Article 9 – Right to marry and right to found a family

This Article is based on Article 12 of the ECHR, which reads as follows: 'Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right.' The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

Dutch legislative proposal

Scrutinising a Dutch draft law against forced marriages, which, amongst others, did not recognise a marriage between cousins concluded in other countries under any circumstances, the National Commission for International Private Law found that this provision violates the right to marry as protected by Article 9 of the Charter. This opinion was taken into account in the law, as adopted. Article 41a of the law allows for the recognition of a marriage between cousins if, before the marriage, they have filed a certified declaration that the marriage is concluded with mutual free consent. (Netherlands, Minister of Security and Justice (Minister van Veiligheid en Justitie),'Motie Van Oosten c.s.', Wet van 7 oktober 2015 tot wijziging van Boek 1 en Boek 10 van het Burgerlijk Wetboek betreffende de huwelijksleeftijd, de huwelijksbeletselen, de nietigverklaring van een huwelijk en de erkenning van in het buitenland gesloten huwelijken (Wet tegengaan huwelijksdwang))

Article 10 – Freedom of thought, conscience and religion

The right guaranteed in paragraph 1 of Article 10 of the Charter corresponds to the right guaranteed in Article 9 of the ECHR. Besides the freedom of adhering to a chosen religious belief and practising it, the right protects actions of conscience such as for example those of conscientious objectors.

Policy

A 2015 Eurobarometer survey[79] on discrimination looked into attitudes and perceptions of Europeans towards discrimination based on different grounds including religion or beliefs and citizens' opinions on different policy measures to combat discrimination. The survey explored the social acceptance of specific groups belonging to ethnic and religious minorities.

Statistics published in the survey show that: 50% of Europeans believe discrimination based on religion or beliefs is widespread (up from 39% in 2012); 33% believe that expressing a religious belief can be a disadvantage when applying for a job (up from 23% in 2012); Muslims suffer from the lowest levels of social acceptance among religious groups, with only 61% of respondents stating that they would be fully comfortable with a colleague at work being Muslim, and only 43% being fully comfortable if their adult children had a relationship with a Muslim person.

Reflecting these results, the majority of respondents thought that new measures need to be introduced to raise the level of protection for groups at risk of discrimination. They were also in favour of information about diversity being provided at school.

[79] Special Eurobarometer 437, DISCRIMINATION IN THE EU IN 2015, available at: http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2077 .

The EU Fundamental Rights Agency survey[80] on discrimination and hate crime against Jews shows rising Antisemitism in Europe; 73% of respondents felt that Antisemitism online has become worse over the last five years[81].

Application by Member States

Council Regulation 1099/2009[82] on the protection of animals at the time of killing establishes the general principle that animals shall only be killed after stunning. At the same time, the EU must respect freedom of religion as enshrined in Article 10 of the EU Charter of Fundamental Rights. The Regulation thus contains an exception to the stunning requirement for animals subject to particular methods of slaughter prescribed by religious rites, provided that the slaughter takes place in a slaughterhouse. Derogation from stunning is therefore justified for religious reasons in the case of slaughter under the Jewish rite (for Kosher meat) or Muslim rites (for Halal meat).

In view of the above mentioned Council Regulation 1099/2009 on protection of animals, Member States define themselves to what extent exemptions from the stunning requirement for animals due to religious reasons are applicable and notify the Commission. Several Parliamentary questions were raised on slaughter without stunning in 2015 and on the respective legislation in specific Member States. The Commission is currently assessing the relevant national laws. Petitions received on slaughter without stunning suggested that such slaughter should not be authorised at EU level. In reply, the Commission highlighted that such proposal would not respect the freedom of religion and the right to practice it.

Case law

a) ECtHR

The judgment in **Karaahmed v. Bulgaria**[83] concerned a demonstration outside a mosque during regular Friday prayers and an official investigation into clashes that erupted in the grounds of the mosque. There were some 100 to 150 demonstrators, all members and supporters of a political party who were protesting against what they referred to as “howling” emanating during the calls to prayer from the loudspeakers installed on the capital’s only mosque. The demonstration got out of hand. Muslim worshippers, including the applicant, were insulted and this was followed by acts of violence and the throwing of objects. The police intervened to stop the violence. The Court found a violation of Article 9. The authorities had been aware of the tensions that existed and the risks to which the planned demonstration gave rise. However, they had not taken any measures to ensure that the rights of the demonstrators and of the worshippers received equal protection. The police actions were confined to simply limiting the violence. Ultimately, the right to demonstrate had been

[80] FRA Report: Antisemitism - Overview of data available in the European Union 2004–2014, October 2015, available at:
http://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-antisemitism-update_en.pdf .
[81] See also below under Article 11 and particularly Article 21 (policy).
[82] Council Regulation 1099/2009 on the protection of animals at the time of killing, OJ L 303, 18.11.2009, p. 1.

[83] ECtHR, judgement of 24 February 2015 in case *Karaahmed v. Bulgaria*, application no. 30587/13.

accorded precedence to the detriment of the right to practise one's religion peacefully. The subsequent investigations had not produced any effective response to the impugned events either.

The judgment in **Ebrahimian v. France**[84] concerned the question of reconciling a hospital employee's freedom of religion with the duty of neutrality owed by health professionals in public hospitals. The applicant, of the Muslim faith, was employed as a social assistant in the psychiatric department of a public hospital. The authorities refused to renew her contract when she refused, after receiving a warning, to remove her veil (covering her hair, ears and neck) at her place of work. The domestic courts upheld the decision, which they considered justified by the need to ensure respect for the constitutional principles of secularism and equality before the law, and the derived duty of civil servants to display neutrality when it came to the manifestation of their religious beliefs in their dealings with the users of public services. In the Convention proceedings, the applicant claimed that the decision had breached her Article 9 right to freedom of religion. The Court found otherwise. The judgment is noteworthy in view of the Court's analysis of the weight to be given to the principles of secularism, equality and neutrality when examining whether the interference pursued a legitimate aim and was necessary.

b) Preliminary rulings pending before the CJEU

In 2015 the **Belgian and French Supreme Courts** (Cour de Cassation) submitted to the CJEU two preliminary rulings requesting it to interpret Directive 2000/78/EC[85]. The two cases are similar in certain regards. Both concern dismissals of female Muslim workers (a receptionist and a computer engineer respectively) by private companies because they were wearing Islamic headscarves at work. However, there are also some differences in the facts. In the Belgian case, the prohibition on wearing a headscarf at the workplace was proclaimed in the company's regulations, applied in all situations and concerned all outward signs of political, philosophical and religious beliefs. In contrast, in the French case, the prohibition was not proclaimed in any formal text issued by the company, concerned basically the Islamic headscarf, and was only applied in the relations with clients (it was imposed following a client's request). The two cases raise important and complex issues involving several fundamental rights and will give the CJEU the opportunity to clarify the interpretation of EU law prohibiting discrimination at the workplace.

Ruling of the Dutch Supreme Court

In a Dutch case, parents argued that compulsory education without exemption for children whose parents change their religious persuasion is in conflict inter alia with the Charter. The parents claimed they should be free to act in line with their persuasion by removing their child from school. The Supreme Court stated that no Union law was being implemented in that case, thus the Charter did not apply. (The Netherlands, Supreme Court, case no NL:HR:2015:1338 of 27 May 2015).

[84]ECtHR, judgment of 25 November 2015 in case *Ebrahimian v. France*, application no. 64846/11.

[85] Belgian Court of cassation referral decision of 9 March 2015 (C-157/15, Achbita); French Court of cassation referral decision of 9 April 2015 (C-188/15, Bougnaoui).

Ruling of the Spanish Constitutional Court

In a case before the Constitutional Court in Spain, the Charter was referred to by a dissenting judge who stressed that the majority vote of the court was in her view misinterpreting the reach of the right to conscientious objection – a right that is mentioned in the Charter but not in Spanish constitutional law. The case concerned a co-owner of a pharmacy who refused, based on conscientious objection, to sell condoms and the 'day-after pill' in his establishment. In his defence he had relied amongst others on the provision of the Spanish Constitution guaranteeing ideological and religious freedom. The Court affirmed the claimant's right to conscientious objection. However, the dissenting judge argued that the right to freedom of thought, conscience and religion (Article 10 of the Charter) and the preparatory works of the Charter (Article 52(7)) imply that only the legislator may establish how the right to conscientious objection can be exercised in practice. (Constitutional Court, dissenting opinion by judge Adela Asua Batarrita, case no STC 145/2015 of 25 June 2015)

Article 11 – Freedom of expression and information

The right to freedom of expression is guaranteed by Article 11(1) of the Charter and includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers. Article 11(2) ensures respect for freedom and pluralism of the media. In line with Article 52(3) of the Charter, the EU's approach to this right and its limits takes inspiration from the case law of the ECtHR and is enshrined in its EU human rights Guidelines on freedom of expression online and offline[86]. The Guidelines address a host of issues including, inter alia, the safety of journalists, the promotion of media freedom and pluralism, defamation laws, blasphemy laws and laws addressing incitement to racial hatred and violence.

The attacks on the offices of ***Charlie Hebdo*** ensuing in the murder of cartoonists and journalists in January 2015 emphasised the paramount significance of freedom of expression in a democratic society; a freedom that extends to information and ideas that may offend, shock or disturb the state or any sector of the population. This may include criticism of religion, ideology, beliefs and institutions and all forms of satire. At the same time freedom of expression will not protect hate speech, as emphasised by the decision of the ECtHR in the case of ***M'Bala***[87] as described below.

Legislation

[86] Available at: http://eeas.europa.eu/delegations/documents/eu_human_rights_guidelines_on_freedom_of_expression_online_and_offline_en.pdf.

[87] ECtHR, judgement of 10 November 2015 in case M'Bala v. France, application no. 25239/13.

The **EU's Audiovisual Media Services Directive 2010/13/EU**[88] (AVMSD) governs EU-wide coordination of national legislation on all audiovisual media, both traditional TV broadcasts and on-demand services. The European Commission carried out a **public consultation** between July and September 2015 with the aim of seeking the views of interested parties on the functioning of the current audiovisual framework (so-called REFIT evaluation) as well as policy options for its future. The evaluation and review of the AVSMD is part of the Commission's Digital Single Market strategy.[89] The Commission has identified a number of issues to be considered in the evaluation and review of the AVMSD. Issues relating to fundamental rights include: an optimal level of consumer protection (Art. 38), user protection (in particular children) and prohibition of hate speech and discrimination (Articles 21, 24 and 38), promoting European audiovisual content (Article 22) and strengthening media freedom and pluralism, access to information and accessibility to content for people with disabilities (Articles 11, 25 and 26). The Commission is currently analysing the replies to the public consultation.[90]

Policy

Several **policy projects** of the European Commission in 2015 aimed at fostering freedom of expression and information as well as media freedom and pluralism, as can be seen below.

On 1 May 2015 the Commission launched two new **independent pilot projects in the field of media freedom and pluralism**.[91] They are part of the ***European Centre for Press and Media Freedom (ECPMF)*** and have the support of the European Parliament. The new projects are coordinating some of Europe's media freedom community and mapping media freedom violations in the EU and neighbouring countries and will run until April 2016.

The **Media Pluralism Monitor tool** is another EU-financed pilot project. It is run independently by the European University Institute in Florence (Centre for Media Pluralism and Media Freedom) to identify potential risks to media pluralism in Member States. It is based on a European Commission funded study published in 2009.[92] The first phase of the project – based on a sample of nine Member States – resulted in a final report published in January 2015.[93] In 2015, the European University Institute in Florence has applied the tool to the remaining Member States.[94]

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[88] Directive 2010/13/EU of the European parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), OJ L 95, p.1.

[89] Available at: https://ec.europa.eu/digital-agenda/en/news/commission-seeks-views-europes-audiovisual-media-rules

[90] A possible legislative proposal to review the AVMSD is expected in 2016.

[91] Available at: https://ec.europa.eu/digital-agenda/en/media-freedom-pilot-projects#Article .

[92] Available at: https://ec.europa.eu/digital-agenda/en/media-pluralism-monitor-mpm.

[93] Available at: http://ec.europa.eu/digital-agenda/news-redirect/20149.

[94] The results of this second phase were published in March 2016, available at: http://ec.europa.eu/digital-agenda/en/media-pluralism-monitor-mpm (under "Second phase").

As regards the **independence of the audiovisual regulatory bodies**, in 2015 the European Regulators Group's for Audiovisual Media Services (ERGA) sub-group on independence[95] continued its work on analysing the characteristics of independence in the light of the existing studies and the experiences of regulatory authorities. On 15 December ERGA adopted the Report on independence of National Regulatory Authorities. The Report provides recommendations on the characteristics of independent regulatory authorities and calls on the Commission to revise the AVMSD in order to ensure the independence of audiovisual regulatory bodies. The independence of regulatory authorities for audiovisual media services is considered essential for the preservation of a free and pluralistic media.[96] The replies to the 2015 Public consultation on the AVMSD showed that a majority of respondents (63%) consider that there is a need to reinforce the independence of audiovisual regulatory bodies. The review of the AVMSD will consider solutions to strengthen the independence of audiovisual regulators.

The Commission remains committed to a vision of an open and free Internet in which all rights and freedoms that people have offline also apply online as presented in the Communication "Internet Policy and Governance Europe's role in shaping the future of Internet Governance"[97] and has published a report on the implementation of this Communication in 2015. In this context, the project for a ***Global Internet Policy Observatory*** is also being implemented. To that end, the Commission had successfully included the reaffirmation to protect human rights online in the outcome document of the World Summit on the Information Society (WSIS+10) review in December 2015. In addition, the Commission-funded project for a Global Internet Policy Observatory is also being implemented to promote capacity building on Internet policies.

The annual meeting of the **EU Media Literacy Expert Group** took place on 1 December 2015 in Brussels. Its main topics included among others: media freedom and pluralism, media ethics, technical verification tools in the EU, tools for decoding propaganda, media literacy beyond borders and questions of whether media have a moral imperative to create informed citizens and support democracy. Furthermore, the development of a new toolkit by the EU Agency for Fundamental Rights and the European broadcasting Union for media to increase accuracy of reporting on diversity related-issues and combat entrenched prejudices was also announced at the meeting.

Application by Member States

On 10 July 2015, the Commission adopted a decision on the compatibility with EU law of certain measures which Lithuania had adopted under Article 3(2) of the **Audiovisual Media Services Directive**. These measures concerned the temporary suspension of the retransmission of the television broadcast ***RTR Planeta*** in the territory of **Lithuania** for a period of three months. The

[95] Further information available at: https://ec.europa.eu/digital-agenda/en/avmsd-audiovisual-regulators.

[96] Further information available at: https://ec.europa.eu/digital-agenda/news-redirect/28179 .

[97] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Internet Policy and Governance Europe's role in shaping the future of Internet Governance (Text with EEA relevance), COM/2014/072, 12.2.2014, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0072&from=EN.

temporary suspension was based on the grounds that, according to the Lithuanian authorities, certain broadcasts on *RTR Planeta* infringed the prohibition of incitement to hatred.

When assessing the compatibility of these measures with EU law, the Commission took into account Article 11 of the Charter (freedom of expression). The Commission found that the effects of the suspension on the freedom of expression did not go beyond those which are intrinsically linked to the suspension of retransmission of the broadcast, possible under Article 3(2) AVMSD. In its decision, the Commission also highlighted the importance of respecting the broadcaster's right to be heard.[98]

Case law

In 2015 the ECtHR decided two important cases in the area of freedom of expression which are also relevant for the interpretation of the Charter.

In the ***Delfi*** case,[99] in which the ECtHR had been called upon to examine a complaint about liability of an Internet news portal for user-generated comments, the Court held that there had been **no violation of Article 10** (freedom of expression) of the European Convention on Human Rights. The applicant company, *Delfi AS*, which runs a news portal run on a commercial basis, complained that it had been held liable by the national courts for the offensive comments posted by its readers below one of its online news articles about a ferry company. At the request of the lawyers of the owner of the ferry company, *Delfi* removed the offensive comments about six weeks after their publication. The case therefore concerned the duties and responsibilities of Internet news portals which provided on a commercial basis a platform for user-generated comments on previously published content and some users – whether identified or anonymous – engaged in clearly unlawful hate speech which infringed the personality rights of others. The Delfi case did not concern other fora on the Internet where third-party comments could be disseminated, for example an Internet discussion forum, a bulletin board or a social media platform. The question before the Court was not whether the freedom of expression of the authors of the comments had been breached but whether holding *Delfi* liable for comments posted by third parties had been in breach of its freedom to impart information. The Court found that the Estonian courts' finding of liability against *Delfi* had been a justified and proportionate restriction on the portal's freedom of expression, in particular, because: the comments in question had been extreme and had been posted in reaction to an article published by *Delfi* on its professionally managed news portal run on a commercial basis; the steps taken by *Delfi* to remove the offensive comments without delay after their publication had been insufficient; and the 320 euro fine had by no means been excessive for *Delfi*, one of the largest Internet portals in Estonia.

In the case of **M'Bala**[100] the *ECtHR* declared that **Article 10 ECHR (freedom of expression) could not be invoked to protect negationist and anti-Semitic performances.** Here Mr M'Bala, a comedian with political activities, had been convicted for public insults directed at a person or group of persons on account of their origin or of belonging to a given ethnic community, nation, race or religion, specifically in this case persons of Jewish origin or faith. The Court found that during the offending

[98]Available at: http://ec.europa.eu/newsroom/dae/itemdetail.cfm?item_id=24517&newsletter_id=0&lang=en

[99] ECtHR, judgment of 16 June 2015 in case *Delfi AS v. Estonia,* application no 64569/09.

[100] ECtHR, judgement of 10 November 2015 in case *M'Bala v. France*, application no. 25239/13.

scene the performance could no longer be seen as entertainment but rather resembled a political meeting, which, under the pretext of comedy, promoted negationism and a degrading portrayal of Jewish deportation victims. In the Court's view, this was not a performance which, even if satirical or provocative, fell within the protection of Article 10 (freedom of expression) of the European Convention on human rights, but was in reality, in the circumstances of the case, a demonstration of hatred and anti-Semitism and support for Holocaust denial. Disguised as an artistic production, it was in fact as dangerous as a head-on and sudden attack, and provided a platform for an ideology which ran counter to the values of the European Convention. The Court thus concluded that *M'Bala* had sought to deflect Article 10 from its real purpose by using his right to freedom of expression for ends which were incompatible with the letter and spirit of the Convention and which, if admitted, would contribute to the destruction of Convention rights and freedoms.

Article 12 – Freedom of assembly and of association

The Right to freedom of peaceful assembly and to freedom of association at all levels including political, trade union and civic matters is protected in Article 12 of the Charter. It corresponds to Article 11 of the ECHR. Its scope, however, is wider since it applies to all European levels. Furthermore unlike Article 11 ECHR, it specifically mentions the special contribution of political parties to the expressing the citizens' political will.

This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.

Case Law

In Case C-396/13 *Sähköalojen ammattiliitto ry v Elektrobudowa Spółka Akcyjna*, the CJEU was requested to clarify **the concept of 'minimum rates of pay' for posted workers.** One of the questions referred to the CJEU was whether it follows from the principle of effective legal protection flowing from **Article 47 of the Charter** and Articles 5, second paragraph, and 6 of Directive 96/71, interpreted in conjunction with the **freedom of association in trade union matters protected by Article 12 of the Charter**, in proceedings concerning claims which have become due for the purposes of that directive in the State where the work is performed (in this case Finland), that the national court must not apply a provision of the labour code of the workers' home State (in this case Poland) which prevents the assignment of a pay claim to a trade union of the State in which the work is performed.

The Posted Workers Directive[101] provides that, as regards minimum rates of pay, the terms and conditions of employment guaranteed to posted workers are to be defined by the law of the host Member State and/or, in the construction industry, by collective agreements which have been declared 'universally applicable' in the host Member State. Finnish law on posted workers provides that the minimum wage is to be determined on the basis of a universally applicable collective agreement. Elektrobudowa Spółka Akcyjna ('ESA'), a Polish company, concluded employment

[101] Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ 1997, L 18, p. 1.

contracts, in Poland and under Polish law, with 186 workers before posting those workers to its Finnish branch. The workers claimed that ESA had **not paid them the minimum remuneration** due to them under the universally applicable Finnish collective agreements for the electricity sector and the building technology sector. They individually assigned their wage claims to the Finnish trade union for the electricity sector so that it could recover those claims.

The Finnish trade union had argued that the collective agreements provide for employees' minimum pay to be calculated on the basis of criteria that are more favourable to employees than those applied by ESA. Those criteria concern, amongst other things, the method of categorising employees by pay groups, of determining pay (on the basis of time or piecework) and of granting employees a holiday allowance, a daily allowance and compensation for travelling time as well as the coverage of their accommodation costs. ESA contended, in particular, that the Finnish trade union **does not have standing to bring proceedings on behalf of the posted workers**, given that Polish law prohibits the assignment of claims arising from an employment relationship.

In its judgment, the Court found that the standing of the Finnish trade union to bring proceedings before the referring court is governed by Finnish procedural law and that the Posted Workers Directive makes clear that questions concerning minimum rates of pay are governed, whatever the law applicable to the employment relationship, by the **law of the host Member State**, in this case, Finland. The Court noted that nothing in the case at issue gave any ground for calling into question the action which the Finnish trade union has brought before the Finnish court or, therefore, the **right to an effective remedy guaranteed by the Charter**, interpreted in conjunction with the **freedom of association in trade union matters protected by Article 12 of the Charter.**

The Court then recalled that the Directive pursues a dual objective: first it seeks to ensure a climate of fair competition between national undertakings and undertakings which provide services transnationally and, secondly, it aims to ensure that a nucleus of mandatory rules of the host Member State on minimum protection will apply to posted workers. The Court points out, however, that the Directive has not harmonised the material content of those rules, although it provides some information in that respect.

Accordingly, the Court observed that the Directive expressly refers to the national law or practice of the host Member State for the purpose of defining minimum rates of pay, in so far as that definition does not have the effect of impeding the **freedom to provide services** between Member States. The Court concluded that the method of calculating rates of pay and the criteria used in that regard are also a matter for the host Member State.

The CJEU thus concluded that the Posted Workers Directive, **read in the light of Article 47 of the Charter**, prevents a rule of the Member State of the seat of the undertaking that has posted workers to the territory of another Member State — under which the assignment of claims arising from employment relationships is prohibited — from barring a trade union, from bringing an action before a court of the second Member State, in which the work is performed, in order to recover for the

posted workers, pay claims which relate to the minimum wage, within the meaning of this Directive.[102]

Ruling of the Czech Constitutional Court

In the Czech Republic, the Constitutional Court had to rule whether it was legitimate to ban the meeting of an anti-abortion association on a square near an elementary school. The meeting included an exhibition of real photos of aborted human embryos and Nazi symbols, as abortions were compared to the Nazi genocide. The municipality had banned the event in order to protect the children against shocking photos – a ban that the Constitutional Court considered in line with the Constitution in a judgement weighing the right to freedom of assembly against the rights of the child by reference also to the Charter. (Czech Republic, Constitutional Court, case no CZ:US:2015:2.US.164.15.1 of 5 May 2015)

Article 13 – Freedom of the arts and sciences

Article 13 of the Charter ensures that arts and scientific research are free of constraint. This does not mean that restrictions of the former are not possible, but that they are only possible under the strict conditions of Article 52 (1) of the Charter.[103]

Policy

The Commission within its research and innovation policy projects not only furthers scientific research but also ensures that other fundamental rights are respected in this context.

The Commission's coordinated actions to embed ethics into EU policymaking in particular by the **European Group on Ethics in Science and New technologies** (EGE)[104] in 2015 included the EGE's Opinion on the Ethics of New Health Technologies and Citizen Participation[105], providing policy guidance in relation to, among others, health innovation, digital health technologies and so-called 'citizen science'. The Opinion investigates the ethical implications of technological and societal shifts that are changing individuals' relationship to their health and healthcare. The Group's analyses and recommendations draw upon the Charter of Fundamental Rights as the cornerstone of the EU's ethical framework, making particular reference to Article 13 but also to human dignity, the right to

[102] See also Article 31(2) for regarding the question of holiday pay and Article 47 for a more detailed analysis about the right to effective legal protection.
[103] For further explanations see below Article 52.

[104] The EGE is an independent, multi-disciplinary body appointed by the President which advises on all aspects of Commission policies and legislation where ethical, societal and fundamental rights dimensions intersect with the development of science and new technologies, see: https://ec.europa.eu/research/ege/index.cfm .

[105] European Group on Ethics in Science and New technologies (2015), *The Ethical Implications of New Health Technologies and Citizen Participation:* https://ec.europa.eu/research/ege/index.cfm .

the integrity of the person, respect for private and family life, protection of personal data, freedom of expression and information, non-discrimination and the right to healthcare.

In December 2015, FRAME published its second Policy Brief.[106] FRAME is a large-scale, collaborative research project funded under the EU's Seventh Framework Programme (FP7), which focuses on the contribution of the EU's internal and external policies to the promotion of human rights worldwide.[107] The first Policy Brief, published in October 2014, had summarised the initial nine FRAME reports. In 2015 FRAME has entered a more evaluative phase. The December 2015 Policy Brief provides a snapshot of the latest research and offers recommendations by reference to the principles and strategic areas of action in the Action Plan on Human Rights and Democratisation (2015-2019). The Policy Brief identifies five cross-cutting issues which mirror the strategic areas identified by the new Action Plan: Strengthening human rights engagement and empowering local actors; Targeting the most urgent human rights challenges; Ensuring a comprehensive human rights approach to conflicts and crises; Fostering better coherence and consistency; Deepening the effectiveness and results culture in human rights and democracy.

Article 14 – Right to education

The right to education and access to vocational and continuing training is enshrined in Article 14 of the Charter. It is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR.

Policy

EU policy cooperation arrangements and funding programmes, starting from or ongoing in 2015, aim at promoting and enacting the right to education

In their Joint 2015 Report on progress in the implementation of the Education and Training 2020 Strategic Framework for European cooperation in education and training (ET2020)[108], the Commission and the Member States agreed a new set of priority areas for work until 2020 which are largely aligned to the "Paris Declaration".[109] In this context, six new Working Groups, involving experts from the Member States, were set up to contribute to the implementation of the new priorities.

In November 2015, the Youth Council adopted the **joint report on European cooperation in the youth field**. It called for European youth policy to focus on the inclusion of young people in society, allowing all young people to become active and engaged members of society. Special attention should be given to those most at risk of social exclusion: young people neither in employment nor education or training (NEETs), youngsters from a migrant background, and those at risk of marginalisation and radicalisation.

[106] http://www.fp7-frame.eu/policy-brief-2/
[107] http://www.fp7-frame.eu/
[108] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2015.417.01.0025.01.ENG&toc=OJ:C:2015:417:TOC
[109] See also Article 22 below; the declaration is available at: http://ec.europa.eu/education/news/2015/documents/citizenship-education-declaration_en.pdf

Article 15 – Freedom to choose an occupation and right to engage in work

The Charter in its Article 15 (1) protects the **right to engage in work** and to pursue a freely **chosen** or accepted **occupation.**

Legislation

On 6 October 2015, the European Commission held an orientation debate on the economic and social dimension of the Single Market and announced a new Labour Mobility Package aimed at guaranteeing fair rules for the free movement of workers in the Single Market. The Labour Mobility Package will include action to support labour mobility, a targeted review of the Posting of Workers Directive, as well as a proposal for improving the coordination of social security systems in Europe.[110]

Case law

On 7 October 2015 the General Court rendered a judgement in the field of agricultural quality policy, in the case of ***Zentralverband des Deutschen Bäckerhandwerks e.V. c/ Commission***[111] touching on several fundamental rights including the right to choose an occupation. In this case, the Central Association of German bakers tried to have Commission Implementing Decision 2013/663/EU[112] annulled. Its background was the rejection of a cancellation request of the Polish name 'Kołocz śląski/kołacz śląski' registered as a protected geographical indication (PGI) under Regulation (EU) No 1151/2012.[113] The applicant's members produced and marketed a product named 'Schlesischer Streuselkuchen'. The applicant claimed an unjustified interference in the economic existence of the German bakers that he represented, caused by the registration of the name 'Kołocz śląski/Kołacz śląski' as PGI, which allegedly constituted a violation of the fundamental right to choose an occupation, to conduct a business and the right to property, enshrined in the Charter of Fundamental Rights. The General Court acknowledged that the registration of name 'Kołocz śląski/Kołacz śląski' as PGI did not imply the impossibility for the German bakers to produce and market 'Schlesischer Streuselkuchen' throughout Germany, since these products were not covered by the registration in question. As the applicant did not invoke that the impossibility for German bakers to use the name 'Kołocz śląski/Kołacz śląski' for their products represented a restriction of their freedom to choose an

[110] Further information available at: http://europa.eu/rapid/press-release_IP-15-5763_en.htm .

[111] CJEU, judgment of 7 October 2015 in Case T-49/14, *Zentralverband des Deutschen Bäckerhandwerks v Commission*.

[112] Commission Implementing Decision 2013/663/EU of 14 November 2013 concerning the rejection of a request to cancel a name entered in the register of protected designations of origin and protected geographical indications provided for in Regulation (EU) No 1151/2012 of the European Parliament and of the Council (Kołocz śląski/kołacz śląski (PGI)), OJ L 306, 16 November 2013, p. 40.

[113] Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, OJ L 343, 14.12.2012, p. 1.

occupation, their freedom to conduct a business and their right to property, the General Court did not find any violation of these fundamental rights in this case.

Article 16 – Freedom to conduct a business

Article 16 of the Charter recognises the freedom to conduct a business in accordance with Union law and national laws and practices. The impact on the freedom to conduct a business is frequently assessed in EU action in policy areas where measures could interfere in the economic activity of the operators concerned.

Legislation

An example the rules having the promotion of the freedom to conduct a business as one of their core objectives is Regulation (EU) 2015/848 on insolvency proceedings.[114] It contains provisions on EU-wide recognition of national hybrid and pre-insolvency proceedings will positively affect the freedom to conduct businesses for companies, as these proceedings will be recognised by all their creditors EU-wide.

In line with the objectives established in the **Digital Single Market Strategy**, the Commission on the 9th of December 2015 adopted two proposals: one on the supply of **digital content** (e.g. streaming music) and one on the **online sale of goods** (e.g. buying clothes online).[115] These Proposals are designed to impact positively a number of rights protected under the EU Charter of Fundamental Rights, including the freedom to conduct a business. More in particular, the proposed rules will fully harmonise several key consumer contractual rights, thus preventing fragmentation of the digital single market and removing existing barriers in the online environment. By allowing traders to rely on a set of uniform key contract law rules in their transactions concluded with consumers, the Commission proposals aim at enhancing the legal certainty for businesses. When selling to consumers from other Member States, traders would no longer face contract law obstacles, such as the costs of complying with different national laws. Traders would be able to build shares in new markets and expand their businesses.

Petitions

[114] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings OJ L 141, 5.6.2015, p. 19.

[115] Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content COM(2015) 634 final, 9.12.2015, available at, http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1450431933547&uri=CELEX:52015PC0634 and Proposal for a Directive of the European Parliament And of the Council on certain aspects concerning contracts for the online and other distance sales of goods COM(2015) 635 final, 9.12.2015, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1450431933547&uri=CELEX:52015PC0635 .

In 2015 the Commission assessed two petitions[116] contesting the point system introduced by the EU rules establishing a Community control system for ensuring compliance with the rules of the **Common Fisheries Policy (CFP)**.[117] According to these rules, points for serious infringements of CFP rules, assigned to the holder of the fishing licence, should be transferred to any future licence holder for the vessel concerned. The petitioner challenged the compatibility of this system with the EU Charter of Fundamental Rights and with the European Convention on Human Rights, including the right to a fair trial, the freedom to conduct business, the right to property and the right not to be tried twice or punished twice for the same offence.

In its replies the Commission recalled that according to Article 128 of the Implementing Regulation to the contested EU rules[118], in the case of transfer of ownership a potential buyer of a fishing vessel has to be informed in advance by the holder of a fishing licence of the number of points which are still assigned to the vessel. This prior notification allows the potential buyer to take an informed decision in terms of accepting the risks involved, in exchange for a reduced price of the vessel. While it is true that the transfer of points may restrict, in particular, the freedom to conduct a business or enjoyment of property, should the licence be suspended on account of points accumulated by the previous owner, it should be recalled that these rights, albeit fundamental, are not absolute. Pursuant to Article 52 (1) of the EU Charter, limitations to the exercise of rights and freedoms recognised therein are allowed under condition that they are provided by law, proportionate and necessary to protect objectives of general interest. The interference of the point system with the fundamental rights of the new licence holder fulfils the conditions mentioned in Article 52 (1) of the Charter since it is provided by law, proportionate and necessary for public policy reasons.

Case law

Case C-157/14, *Neptune Distribution* concerns a request for **preliminary ruling** on whether EU law, in particular **Directive 2009/54/EC on the exploitation and marketing of natural mineral waters**[119], infringes a.o. Article 16 of the Charter (as well as Article 11) when laying down conditions which should be complied with by manufacturers and distributors of mineral waters when placing on labels and advertising material indications regarding the low salt content or sodium chloride content. **The**

[116] Petition No 1057/2014 by Bruno Dachicourt (French) on behalf of Association of French fishermen, on Common Fisheries Policy; Petition No 1042/2014 by O.L., on behalf of the French Fishermen's association, on discriminatory aspects of Regulation 1224/2009.

[117] Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006, OJ L 343, 22.12.2009, p. 1.

[118] Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy, OJ L 112, 30.4.2011, p. 1.

[119] Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters (Recast), OJ L 164, 26.6.2009, p. 45.

Advocate General in his Opinion of 9 July 2015[120] found that the provisions which regulate the voluntary use by operators of statements on the beneficial properties of these products do not violate the essence of the freedom of expression and information and the freedom to conduct a business, such provisions were proportionate to attain the objectives of ensuring a high level of consumer protection (enshrined in Article 38 of the Charter) and fair commercial practices among operators. Thus, the AG supported the Commission's argumentation and confirmed that the freedom of expression and information and the freedom to conduct a business are not absolute rights. These rights can be limited by the Union legislators provided that the restrictions are laid down in law, respect the essence of those freedoms, are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

Ruling of the German Federal Court of Justice

The Federal Court of Justice ruled on a dispute between the *Stokke* company, that sells baby high chairs, and the internet trading platform eBay. Stokke claimed that offers by competitors are displayed as hits when eBay visitors use trademark labels registered by Stokke as search words. The Court described the complex interaction of the protection of personal data (Article 8), the freedom to conduct a business (Article 16) and the right to an effective remedy and a fair trial (Article 47) and concluded that eBay is required to perform supervisory duties with regard to trademark infringements on its online trading platform if notified by trademark holders about violations. (Germany, Federal Court of Justice, case no I ZR 240/12 of 5 February 2015).

Article 17 – Right to property

Article 17 of the Charter protects the right of everyone to **property**, which includes the right to own, use, and dispose of lawfully acquired possessions. The Charter also guarantees the protection of **intellectual property.**

Legislation

As already indicated above under article 16, Regulation (EU) 2015/848 on **insolvency proceedings** (recast) was adopted[121] on 20 May 2015. Recital 83 of the Regulation underlines that "*this Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to promote the application of Articles 8, 17 and 47 concerning, respectively, the protection of personal data, the right to property and the right to an effective remedy and to a fair trial*".

[120] CJEU, Conclusions of the Advocate General, M. Niilo Jääskinen of 9 July 2015 in Case C-157/14, *Neptune Distribution.*

[121] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, OJ L 141, 5.6.2015, p. 19.

The recast Regulation expands its scope to new national insolvency schemes which until now were not covered by the current rules (debtor-in-possession proceedings, pre-insolvency and personal insolvency schemes). Such national proceedings affect the *right to property of creditors* compared to liquidation procedures, because these schemes are all based on some form of arrangement between the debtor and a majority of creditors. In these schemes, dissenting creditors can be overruled by the majority. This impact on the right to property is considered to be proportionate to the objective of rescuing businesses and saving jobs, not the least since it has been shown that the median recovery rate for creditors may be significantly higher in case of restructuring as compared to liquidation.

On the other hand, the clarifications in the recast Regulation should lead to a reduction in abusive forum-shopping, which is combined with a right for all creditors to a judicial review of the jurisdiction of the court. This will improve the protection of the creditor's right to property because there will be fewer cases where his claim will be lost or diminished in value due to an abusive shift of his debtor's centre of main interests another country.

On 9 December 2015 the European Commission unveiled its vision to modernise the EU copyright rules, as part of the Digital Single Market Strategy adopted by the Commission on 6 May 2015.[122] As a first step, **the Commission adopted a legislative proposal on cross-border portability of online content services in the internal market**, which is designed to ensure that subscribers to online content services can continue using them while temporarily present in another Member State.[123] The explanatory memorandum to the proposal outlines that while the proposed measures would have a limited impact on copyright as property right or on the freedom to conduct a business, as recognised in the European Charter of Fundamental Rights (Articles 16 and 17) these measure would be justified in view of the Treaty fundamental freedom to provide and receive services across borders.

Following the Paris, Copenhagen and Thalys train terror attacks in 2015, the Commission tabled in November 2015 a proposal to **amend the existing EU legislation on acquisition and possession of firearms**.[124] The Commission proposal is designed to lay down the minimum requirements that Member States should impose as regards the acquisition and possession of the different categories of firearms, depending on the potential danger they represent, and regulates the conditions for the transfer of firearms across the EU, while granting more flexible rules for hunting and target shooting. It covers the life cycle of a firearm from production to trade, ownership and possession, deactivation and destruction. The proposal also seeks to improve consistency with international standards. In view of its purpose and the conditions put on the acquisition and possession of firearms, this

[122] A Digital Single Market Strategy for Europe - COM(2015) 192 final, 6.5.2015, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1447773803386&uri=CELEX%3A52015DC0192.

[123] Proposal for a Regulation of the European Parliament and of the Council on ensuring the cross-border portability of online content services in the internal market, adopted on 9 December 2015, COM(2015) 627 final, 2015/0284 (COD), 9.12.2015, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:0627:FIN.

[124] Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons, COM/2015/0750 final - 2015/0269 (COD), 18.11.2015, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2015%3A750%3AFIN.

measure would introduce limitations on the right to property in line with the limitations to fundamental rights allowed under Article 52 (1)of the Charter.

Policy

The Commission adopted on 9 December 2015 a **Communication on the modernisation of the European Copyright Framework**.[125] The Communication underlines that the respect for copyright, as for any other intellectual property right, is essential to promote creativity and innovation and create trust in the market place. Rights that cannot be effectively enforced have little economic value, particularly when infringements occur on a commercial scale that free-rides on the work and investment of creators, the creative industries and legal distribution services. Such commercial-scale infringements are currently very frequent and harmful, not only to right holders but also to the EU economy as a whole. An effective and balanced civil enforcement system, which takes full account of fundamental rights, is required to reduce the costs of fighting infringements, particularly for small businesses, and keep up with their increasing cross-border nature. The Commission's action plan is built on four complementary pillars:

1. Widening online access to content across the EU, including in the light of the results of the review of the Satellite and Cable Directive;

2. Adapting exceptions to copyright rules to a digital and cross-border environment, focussing in particular on those exceptions and limitations which are key for the functioning of the digital single market and the pursuit of public policy objectives (such as those in the area of education, research - including text and data mining - and access to knowledge);

3. Creating a fair marketplace, including as regards the role of online intermediaries when they distribute copyright-protected content;

4. Strengthening the enforcement system.

Application by Member States

In June 2015 the Commission sent a reasoned opinion to Hungary regarding certain contractual rights for the use of agricultural land (usufruct rights). In the Commission's view, the Hungarian legislation restricts the rights of cross-border investors in a way that may violate EU laws on free movement of capital and freedom of establishment. Neither is it in line with the right to property as enshrined in the EU Charter of Fundamental Rights. A Hungarian law that was passed on 1 May 2014 terminated some usufruct contracts held by foreign investors, shortening the transitional period for investors from 20 years to only four and a half months. Investors had expected to continue using the land on the basis of the earlier transitional period and had made their investment decisions accordingly. The new law therefore deprived the affected parties of their acquired rights and of the value of their

[125] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Towards a Modern, More European Copyright Framework, COM(2015) 626 final, 9.12.2015, available at: http://ec.europa.eu/digital-agenda/en/news/towards-modern-more-european-copyright-framework-commission-takes-first-steps-and-sets-out-its.

investments. The Commission is also contesting a second provision of the same law, which allows land lease contracts that were concluded before July 1994 to be unilaterally terminated.[126]

Article 18 – Right to asylum

The right to asylum is guaranteed by Article 18 of the Charter.

Policy and Legislation

A number of measures contained in the **European Agenda for Migration**[127] and its subsequent implementation packages are of direct relevance to the enjoyment of the fundamental right to asylum.

In June 2015, the Commission adopted a **Recommendation on a European resettlement scheme**[128] to resettle, within two years, 20 000 people in need of international protection. The Recommendation was followed by the Conclusions of the Member States agreeing to resettle, together with the Dublin associated States (Iceland, Norway, Liechtenstein, Switzerland), 20 504 people in need of international protection. Resettlement to the EU means the transfer of displaced persons in clear need of international protection, on request of the United Nations High Commissioner for Refugees (UNHCR), from a third country to a Member State. It enables an orderly, managed, safe and dignified arrival of such persons in place of dangerous and irregular migration. This first joint EU resettlement effort is to be achieved by the Member States with the EU financial assistance. By the end of the year 2015, 779 people were resettled in the framework of the scheme. While this was an important milestone, there are still large divergences between Member States regarding the procedural rules and the status granted to persons admitted as well as the numbers of persons admitted.

In light of the challenges faced by Turkey, currently hosting more than two and a half million persons displaced by the conflict in Syria, the EU and Turkey decided to step up their cooperation on support of Syrians under temporary protection in Turkey and on migration management in a coordinated effort to address the crisis created by the situation in Syria. To this end, on 15 October 2015, the Commission presented to the European Council the **EU Joint Action Plan with Turkey**.[129] At the

[126] Further information available at: http://europa.eu/rapid/press-release_MEMO-15-5162_en.htm

[127] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A European Agenda on Migration, COM(2015) 240 final, 13.5.2015, available at: http://ec.europa.eu/lietuva/documents/power_pointai/communication_on_the_european_agenda_on_migration_en.pdf.

[128] Commission Recommendations on a European resettlement scheme, C(2015) 3560 final, 8.6.2015, available at: http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/recommendation_on_a_european_resettlement_scheme_en.pdf.

Summit of 29 November 2015, the EU and Turkey activated the Joint Action Plan. The Action Plan tries to address the current crisis situation in a spirit of cooperation and burden sharing by addressing the root causes leading to the massive influx of Syrians; by supporting Syrians under temporary protection and their host communities in Turkey; and by strengthening cooperation to prevent irregular migration flows to the EU. Commitments undertaken by Turkey in the framework of that increased cooperation on migration must not undermine in any way the respect for human rights of migrants and asylum seekers, which remain core conditions and are non-negotiable. Violation of human rights would go against the spirit of the EU cooperation with Turkey.

In December 2015, the Commission also adopted **a recommendation for a voluntary humanitarian admission scheme with Turkey**, aimed at creating a system of solidarity and responsibility sharing with Turkey for the protection of persons displaced by the conflict in Syria to Turkey. Humanitarian admission is an expedited process by which countries admit displaced persons, based on a limited set of criteria, from third countries to provide them with protection. The proposed humanitarian admission scheme is an important flanking measure of the mutual commitments to jointly manage the Syrian refugee crisis contained in the Joint Action Plan with Turkey. In addition, the EU created a coordination mechanism, the **Facility for Refugees in Turkey**, within the legal framework presented by the Commission on 24 November 2015, in order to assist Turkey in addressing the immediate humanitarian and development needs of the refugees and their host communities. The overall objective of the Facility is to coordinate and streamline actions to be financed from the Union's budget and bilateral contributions from Member States in order to enhance the efficiency and complementarity of support provided to refugees and their host communities in Turkey.

As part of the efforts made in order to assist Member States faced with a sudden influx of asylum seekers and reduce the strain put on their asylum systems in line with the principles of solidarity and burden sharing, and with a view to ensure effective access to asylum, the Commission activated for the first time in 2015 the emergency mechanism foreseen in the Treaties[130] proposing a **temporary relocation mechanism for persons in clear need of international protection** within the EU, which resulted in in a plan to relocate 160,000 people from Greece and Italy over a two year period.[131] In September 2015, the Commission also adopted **a proposal for a Regulation establishing a Crisis Relocation Mechanism and amending Regulation (EU) No 604/2013 (the Dublin III Regulation)**.[132] The overall objective is to ensure that the Union has at its disposal a robust crisis relocation mechanism to structurally deal with situations of crisis in the asylum area in an effective manner. The

[130] Article 78(3) TFEU

[131] Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece and Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

[132] Proposal for a Regulation of The European Parliament And Of The Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person, COM(2015)450 final, 9.9.2015, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015PC0450 .

mechanism should be rapidly triggered in respect of any Member State that experiences crisis situations of such a magnitude as to put under significant strain even well prepared and functioning asylum systems, also taking into account the size of the Member State concerned. The proposal is currently subject to the ordinary legislative procedure.

The second implementation package of the European Agenda for Migration, adopted by the Commission in September 2015, also included a **proposal for a Regulation establishing an EU common list of safe countries of origin**[133], as agreed by the European Council. Currently EU law does not contain an EU common list of safe countries of origin; only some Member States have adopted national lists of safe countries of origin. The Commission proposal aimed at establishing such an EU common list, on the basis of the common criteria set in the Asylum Procedures Directive, as it would facilitate the use by all Member States of the procedures linked to the application of the safe country of origin concept and will also reduce the existing divergences between Member States' national lists of safe countries of origin, thereby facilitating convergence in the procedures and equal treatment of applicants for international protection. The list has been drawn up in light of reports by the European External Action Service as well as information from Member States, the European Asylum Support Office, the Council of Europe, the United Nations High Commissioner for Refugees and other relevant international organisations. The Commission proposal is clear insofar as the inclusion of a specific third country cannot establish an absolute guarantee of safety for nationals of that country and will not dispense therefore with the need to conduct an appropriate individual examination of their applications for international protection, so as to fully ensure respect of the right to asylum and the protection against *refoulement* : where an applicant shows that there are serious reasons to consider the country not to be safe in his or her particular circumstances, the designation of the country as safe can no longer be considered relevant for him or her.

Finally, as part of the immediate action to assist frontline Member States which are facing disproportionate migratory pressures at the EU's external borders, the European Commission proposed to develop the so-called "**hotspot approach**". By the end of 2015, two hotspots were operational in Italy (in Trapani and Lampedusa) and one in Greece (in Lesbos). Hotspots have the potential to assist Member States in better translating fundamental rights safeguards into practice[134], including when it comes to ensuring quick and effective access to asylum procedures. However, shared efforts shall be made in order to ensure that adequate resources and staff are put in place to fully implement all necessary measures. The Commission closely monitors the achievements of the involved authorities, stakeholders and agencies in that regard.

Case-law

[133] Proposal for a Regulation Of The European Parliament And Of The Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU, COM(2015) 452 final, 9.9.2015, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015PC0452 .

[134] See also below Article 19.

In its judgment in the case *Tall*[135], the CJEU ruled that the Asylum Procedures Directive read in conjunction with Article 47 of the Charter, did not preclude **national legislation that did not confer suspensory effect on an appeal brought against a decision such as the one at issue in the main proceedings, in particular a decision not to further examine a subsequent application for asylum**. Such a situation is different in comparison to a return decision which, if enforced, could expose the person concerned to a serious risk of being subjected to inhuman or degrading treatment, in view of the requirements of Article 19(2) and Article 47 of the Charter.

In *Sheperd*[136] the CJEU ruled on a request for a preliminary ruling concerning the interpretation of Article 9(2)(b), (c) and (e) of the old Qualifications Directive.[137] The Court established that this provision must be interpreted to **cover situations in which the military service performed would itself include, in a particular conflict, the commission of war crimes, including situations in which the applicant for refugee status would participate only indirectly in the commission of such crimes**. This should not be interpreted to exclusively concern situations in which it is established that war crimes have already been committed, or are such as to fall within the scope of the International Criminal Court's jurisdiction, but also those in which the applicant for refugee status can establish that it is highly likely that such crimes will be committed.

In *H. T.*[138] the Court was requested to interpret Article 21(2) and (3) and Article 24(1) and (2) of the old Qualifications Directive in relation to the possible revocation by a Member State of the residence permit of a refugee on grounds of security reasons. The Court established that **a residence permit, once granted to a refugee, may be revoked**, either pursuant to Article 24(1) of that Directive, **where there are compelling reasons of national security or public order** within the meaning of that provision, or pursuant to Article 21(3) of that Directive, where there are reasons to apply the derogation from the principle of *non-refoulement* laid down in Article 21(2) of the same Directive. At the same time, the Court clarified that, in order to be able to revoke a residence permit granted to a refugee on the ground that that refugee supports a terrorist organisation, the competent authorities are nevertheless obliged to carry out, under the supervision of the national courts, an **individual assessment of the specific facts** concerning the actions of both the organisation and the refugee in question. Where a Member State decides to expel a refugee whose residence permit has been revoked, but suspends the implementation of that decision, it is incompatible with that Directive to deny access to the benefits guaranteed by Chapter VII of the same Directive, unless an exception expressly laid down in the Directive applies.

Application by Member States

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[135] CJEU judgement of 17 December 2015 in Case C-239/14 *Abdoulaye Amadou Tall v Centre public d'action sociale de Huy*.

[136] CJEU judgement of 26 February 2015 in Case C-472/13, *Andre Lawrence Shepherd v Bundesrepublik Deutschland.*

[137] Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304, 29.4.2004, p.12.

[138] CJEU judgment of 24 June 2015 in Case C-373/13, *H. T. v Land Baden-Württemberg.*

Following up on the second implementation package of the European Agenda on Migration, the European Commission stepped up its efforts to ensure the full application of EU law in the area of migration and asylum. The pieces of legislation concerned focus on fairer, quicker and better quality asylum decisions (the **Asylum Procedures Directive**[139]); ensuring that there are humane physical reception conditions (such as housing) for asylum seekers across the EU (the **Reception Conditions Directive**[140]); and clarifying the grounds for granting international protection (the **Qualification Directive**[141]).

On 10 December 2015, the European Commission also initiated an **infringement procedure against Hungary** concerning the compliance of Hungarian legislation adopted as a response to the migration crisis.[142] Grievances raised included the **compatibility of the new Hungarian rules on asylum procedures with provisions of the recast Asylum Procedures Directive**, in particular as it concerns the right to an effective remedy against negative asylum decisions.

In another case opened by the Commission regarding deficiencies in the asylum procedures and inadequate reception conditions for asylum seekers, especially those in detention centres, in **Greece**, the Commission sent in September 2015 an additional letter of formal notice raising some points which were not solved yet. These points included reception capacities for applicants for international protection and failure to put in place arrangements to ensure that all applicants for international protection are ensured a **standard of living adequate to the health status of applicants and capable of ensuring their subsistence**; **material reception conditions**, in particularly for those with special reception needs and vulnerable persons; treatment of **unaccompanied children**.

The Commission also provided **training to the public authorities of Member States who are responsible for the management of the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF)** at the AMIF-ISF Committee meeting of June 2015. The training concentrated on the practical implications of the Charter provisions for the implementation of AMIF and ISF during the programming period 2014-2020.

Article 19 – Protection in the event of removal, expulsion or extradition

Article 19 of the Charter incorporates the same right as afforded by Article 4 of protocol No.4 to the ECHR as well as case law of the ECtHR on Article 3 of the ECHR. It prohibits from collective expulsions

[139] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ L 180, 29.6.2013, p. 60.

[140] Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 29 June 2013, OJ L. 180, 29.6.2013, p.96.

[141] Council Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ L337, 20.12.2011, p.9.

[142] See below Articles 47 and 48.

and protects individuals from being removed, expelled or extradited to a state where there is a serious risk of death penalty, torture or other inhuman or degrading treatment or punishment.

Legislation and Policy

In the field of return, a **Return Handbook**[143] was published by the European Commission to accompany the **Action Plan on return**[144] adopted in September 2015, with a view to providing concrete guidance for national authorities in charge of return. It contains detailed common guidelines, best practices and recommendations on how to ensure that any return operation fully complies with fundamental rights and the principle of *non-refoulement*, including as regards the granting of suspensive effect to return decisions in cases in which there are substantial grounds for believing that the person, if returned, will be exposed to a real risk of ill-treatment.[145]

At the operational level, the so called **hotspot approach** developed by the Commission also has the potential to contribute to ensuring better protection against *refoulement* in the context of large migrant inflows at the EU external borders.[146]

The **proposal for a Regulation on the European Border and Coast Guard** adopted in December 2015, intended to ensure the implementation of the European integrated border management in line with the principle of shared responsibility, establishes a number of fundamental rights safeguards that aim to ensure compliance with fundamental rights, including the principle of *non-refoulement*.[147]

The importance of respecting fundamental rights, including the principle of *non-refoulement,* in border surveillance operations, as provided in Regulation 656/2014[148], was also underlined when establishing the **Joint Operation Triton**, launched off the coast of Italy in order to reduce the loss of lives at sea.[149]

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[143] Commission recommendation establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks, C(2015) 6250 final, 1.10.2015, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/commission_recommendation_establishing_a_return_handbook_for_member_states_competent_authorities_to_deal_with_return_related_tasks_en.pdf.

[144] Communication from the Commission to the European Parliament and to the Council – EU Action Plan on return, COM(2015) 453 final, 9.9.2015, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/communication_from_the_ec_to_ep_and_council_-_eu_action_plan_on_return_en.pdf..

[145] See also above Article 4.

[146] See above Article 18.

[147] See also above Articles 1 and 4.

[148] Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 189, 27.6.2014, p. 93.

[149] See also above Article 2.

Case law

In *Celaj*[150], the Court of Justice clarified that **the Return Directive**[151] **does not preclude penal sanctions being imposed, following national rules and in observance of fundamental rights, including the principle of *non-refoulement*, on third-country nationals to whom the return procedure has been applied and who are staying illegally without any justified ground for non-return, or to third-country nationals who unlawfully re-enter the territory of a Member State in breach of an entry ban issued against them,** provided that this is not liable to jeopardise the attainment of the objectives pursued by that directive.

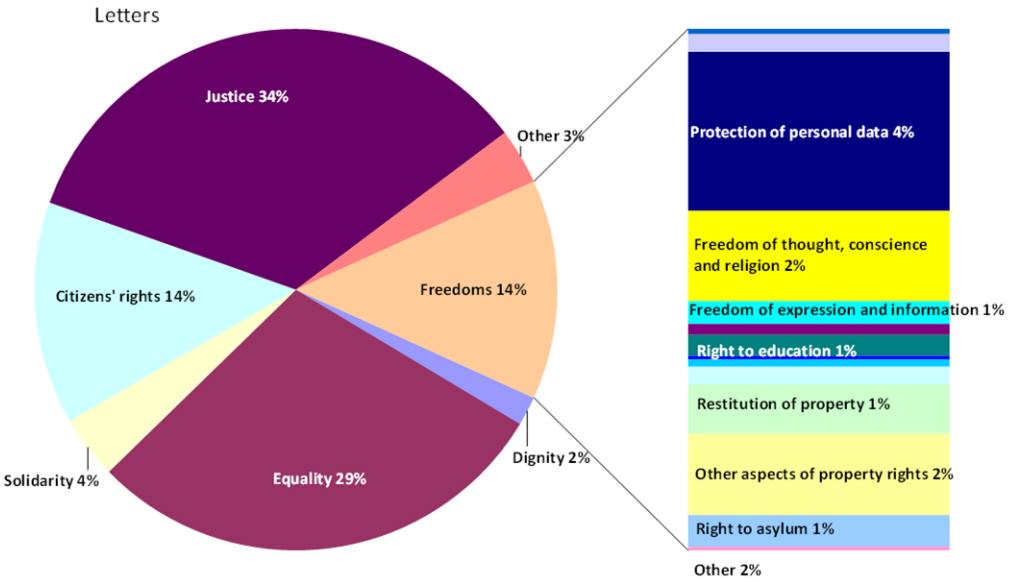
Petitions

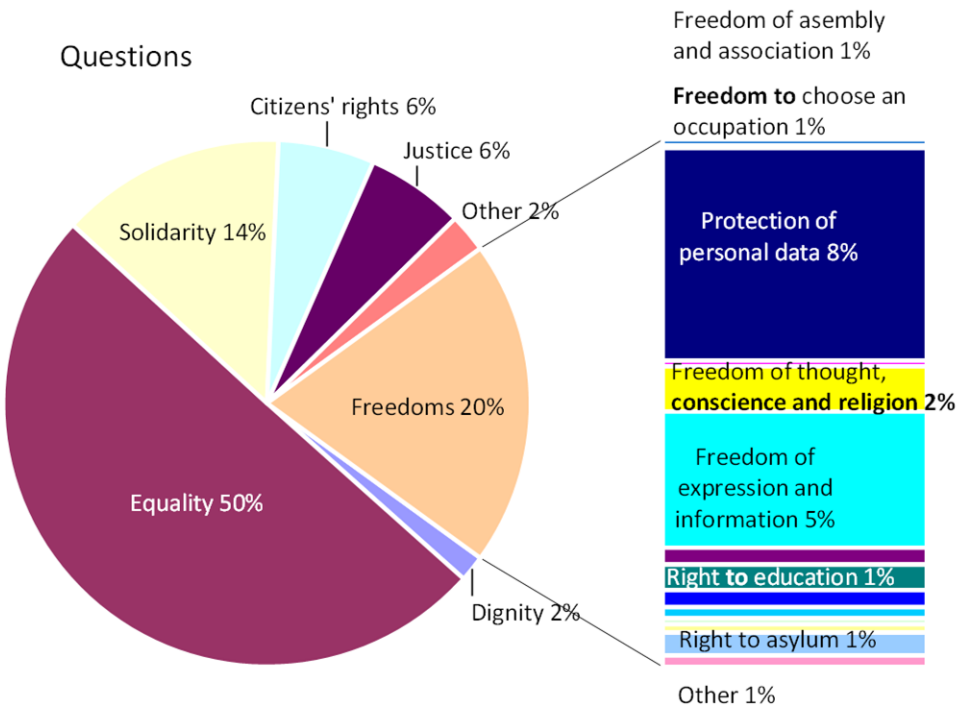
A number of members of the European Parliament as well as citizens and non-governmental organisations raised concerns related to alleged push-back of migrants at external borders by several Member States and possible violations of Article 19 of the Charter. Most of the parliamentary questions and letters from citizens and non-governmental organisations asked whether the Commission is aware of the alleged push-back and which measures it is expected to take to ensure that the relevant Member States act in full compliance with the Charter and other relevant international and European legislation. The right to protection in the event of removal, expulsion or extradition is often mentioned in close relation with the right to asylum.

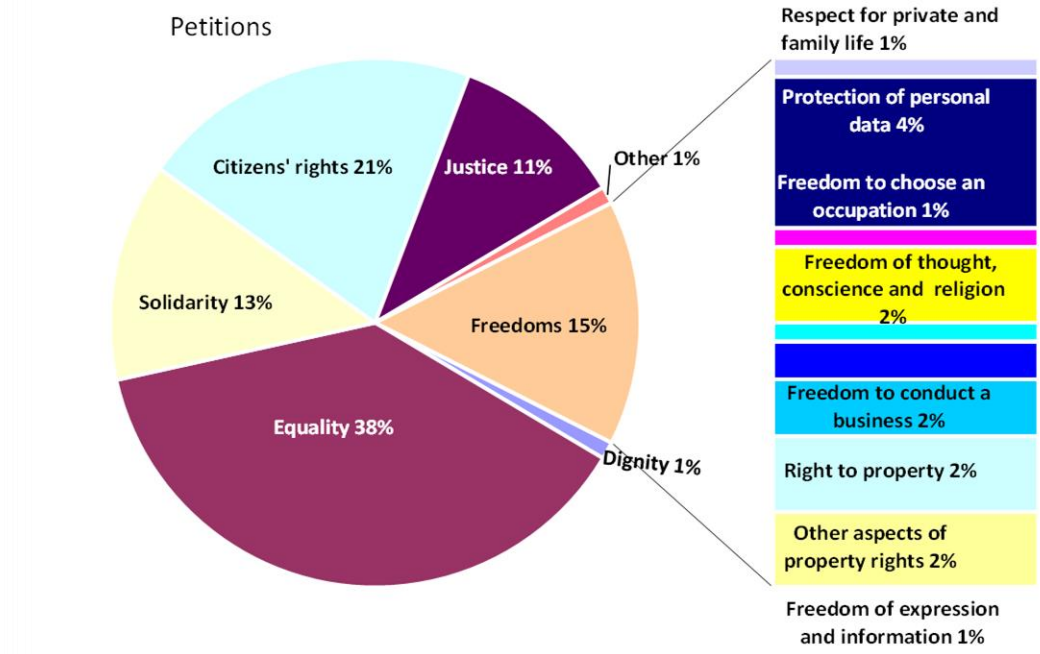
In its replies the Commission indicated that it is aware of reports of alleged 'push-backs' of migrants at the EU's borders. It has raised this issue with the relevant Member States' authorities on several occasions and will continue to monitor the situation.

[150] CJEU judgment of 1 October 2015 in Case C-290/14 *Skerdjan Celaj.*

[151] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98.


Letters
Justice 34%
Other 3%
Citizens' rights 14%
Freedoms 14%
Solidarity 4%
Equality 29%
Dignity 2%
Protection of personal data 4%
Freedom of thought, conscience and religion 2%
Freedom of expression and information 1%
Right to education 1%
Restitution of property 1%
Other aspects of property rights 2%
Right to asylum 1%
Other 2%


Questions
Citizens' rights 6%
Justice 6%
Other 2%
Solidarity 14%
Freedoms 20%
Equality 50%
Dignity 2%
Freedom of asembly and association 1%
Freedom to choose an occupation 1%
Protection of personal data 8%
Freedom of thought, conscience and religion 2%
Freedom of expression and information 5%
Right to education 1%
Right to asylum 1%
Other 1%


Petitions
Citizens' rights 21%
Justice 11%
Other 1%
Solidarity 13%
Freedoms 15%
Equality 38%
Dignity 1%
Respect for private and family life 1%
Protection of personal data 4%
Freedom to choose an occupation 1%
Freedom of thought, conscience and religion 2%
Freedom to conduct a business 2%
Right to property 2%
Other aspects of property rights 2%
Freedom of expression and information 1%

Equality

In 2015, the European Commission set up a **High Level Group on Non-Discrimination, Equality and Diversity** which brings together representatives from the Member States and EEAS countries and deals with non-discrimination, equality and diversity issues.

The Commission published the results of the **Eurobarometer on Discrimination in the EU**. This survey provides a comprehensive, updated and methodologically rigorous data set on citizens' attitudes to discrimination in the EU.

Having acquired the power to oversee the application of Framework Decisions in 2014, the Commission in 2015 held **bilateral dialogues with the Member States** on remaining gaps in their transposition and practical implementation of this legislation with a view to ensuring full and correct transposition and implementation of the **Framework Decision on racism and xenophobia**.

The Commission has also made explicit its commitment to combat discrimination by publishing the **List of Actions by the Commission to advance LGBTI Equality** to be implemented during the period 2016-2019.

In the field of equality between women and men, the Commission adopted a **Report on the application of Council Directive 2004/113/EC** implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

The **9th European Forum on the rights of the child** gathering representatives of a wide range of organisations involved in the national child protection systems of all Member States, as well as Members of the European Parliament and NGOs. The Forum focused on **integrated child protection systems**.

In its landmark judgment **Chez Razpredelenie**, the first CJEU case on Roma discrimination, the CJEU held that the installation of electricity meters at an inaccessible height in a district densely populated by Roma is liable to constitute discrimination on the grounds of ethnic origin when such meters are installed in other districts at a normal height.

In the **Léger** case, the CJEU issued a preliminary ruling regarding a French Decree which provided a permanent contraindication to blood donation for men who have had sexual relations with another man. The Court held that such a limitation may be justified as it meets a genuine objective of general interest recognised by the EU, as the aim of the limitation is to minimise the high risk of transmitting an infectious disease to recipients.

Title III

Equality

Article 20 – Equality before the law

Article 20 stipulates that everyone is equal before the law. The article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the CJEU as a basis principle of Union law.

Case law

In case T-544/13 ***Dyson v. Commission***[152], the applicant challenged the Regulation No 665/2013 on the energy labelling of vacuum cleaners on the ground that the testing techniques in the Regulation discriminated in favour of bagged vacuum cleaners to the disadvantage of bagless vacuum cleaners or vacuum cleaners based on 'cyclonic' technology. The General Court of the CJEU ruled out a violation of the equal treatment principle on the grounds that there was an objective justification for applying the same testing methods to different situations.

Ruling of the French Council of State

The French Council of State ruled on the withdrawal of the French nationality of a dual Moroccan-French citizen, on the grounds that he had been convicted for participating in a criminal association for the preparation of an act of terrorism. The Court referred to Articles 20 and 21 of the Charter and, taking into account the criteria developed in the case law of the CJEU (judgment C-135/08 of 2 March 2010), concluded that the withdrawal was compatible with EU law. (France, Conseil d'Etat, case FR:CESSR:2015:383664.20150511 of 1 May 2015).

Article 21 – Non-discrimination

The Charter **prohibits any discrimination** based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. The Charter also prohibits discrimination on grounds of nationality, within the scope of application of the Treaties and without prejudice to any of their specific provisions. Discrimination based on racial or ethnic origin is a violation of the principle of equal treatment and is prohibited in the workplace and outside the

[152] CJEU, judgment of 11 November 2015 in Case T-544/13, *Dyson v. Commission*.

workplace. In the area of employment and occupation, EU legislation prohibits discrimination on grounds of religion or belief, disability, age or sexual orientation.

1. General Non-Discrimination issues

Legislation

The Commission proposal for a horizontal anti-discrimination directive[153], aiming to extend the protection against discrimination found in the employment equality directive to areas outside employment (social protection, education and access to goods and services, including housing) is being discussed in the Council. President Juncker has deemed the adoption of this Directive a priority for this Commission and the Commission continues to push for the necessary unanimity in Council.

Policy

In 2015, the European Commission set up a High Level Group on Non-Discrimination, Equality and Diversity (HLG) directly linked to thematic priorities of the Presidency of the Council. It brings together representatives from all EU Member States and EEAS countries dealing with non-discrimination, equality and diversity issues and meets twice a year (one meeting per EU Presidency).

The first meeting of the HLG was held in Brussels on 19-20 May 2015 under the Latvian Presidency of the Council. The second HLG was held in Luxembourg on 27 October 2015 and was hosted by the Luxembourgish Presidency of the Council. The agenda focused mostly on LGBTI policies and the Commission presented the results of its 2015 Eurobarometer on discrimination.[154] Furthermore, the HLG agreed on the organisation of two good practice exchange seminars by the European Commission in 2016 with the titles "Effective mainstreaming of Equality and Non-discrimination in policy making and impact assessment " and "Legislation for transgender people".

On 2 October 2015, the Commission published a special **Eurobarometer on Discrimination in the EU**[155] 2015. This survey comprises one of the most comprehensive, updated and methodologically rigorous data set which has been compiled on citizen's attitudes to discrimination in the EU. For the first time, the survey explores the social acceptance of specific groups belonging to ethnic and religious minorities. Also, for the first time the survey is looking into social acceptance and citizens' views on the rights of lesbian, gay, bisexual and transgender people. Such data help the Commission

[153] Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008) 426 final, 2.7.2008, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0426:FIN:EN:HTML.

[154] Special Eurobarometer 437 " Discrimination in the EU in 2015" Available at: http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2077.

[155] Special Eurobarometer 437 " Discrimination in the EU in 2015" Available at: http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2077.

to develop effective and better targeted equality policies for various actions needed to be taken at an EU level in promoting specific anti-discrimination policies.

While EU equality directives do not require Member States to collect equality data, the collection and analysis of such data is a key tool in fighting discrimination by providing clear evidence of discrimination and quantifying it. To help address this gap, the European Commission has launched a **comparative study on the equality data collection practices of 28 Member States** in 2015.[156] The aim of the study is to analyse in depth the policy and legal framework of equality data collection in Europe and examine how Member States collect data on equality issues. The frequency of the collection of the data and how the data is used by national authorities will also be explored. The study will include a detailed mapping, handbook and catalogue of good practices.

The European Commission supports diversity at the workplace including all society groups not only through legislation, but also by encouraging voluntary initiatives from businesses. It does so through the EU Platform of Diversity Charters, a network funded by the Commission. Concrete actions of the Platform include joint publications to promote the business case of diversity and organisation of an annual event bringing together diversity actors from all Europe. The last Diversity Charters Annual Forum was co-organised with the Luxembourgish Presidency of the Council on 28 October 2015, focusing on the role of public authorities and the media in promoting diversity. The Commission announced at this Forum specific follow up activities focused on diversity in the media[157].

As regards funding, for the period 2014-2020 the Rights, Equality and Citizenship programme supports national and transnational projects on non-discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Based on the 2015 annual work programme of the Rights, Equality and Citizenship Programme, the Commission made available EUR 2.765.000 for supporting national and transnational projects on training and cooperation of relevant professionals, mutual learning, exchange of good practices, dissemination and awareness raising activities to better prevent and respond to non-discrimination. The Commission also supports financially the work of EU NGOs actively working on non-discrimination on all the grounds.

Case Law

The CJEU delivered a preliminary ruling[158] upon request from a Spanish court on the question of discrimination on the basis of age. In the case ***Perez***[159], the applicant before the Spanish court had challenged the city council's decision of 7 March 2013 approving the specific requirements laid down in a notice of competition intended to fill 15 local police officer posts. One of these requirements was that the candidate police officer should not be older than 30 years. According to Mr Perez, this requirement constituted discrimination on the basis of age. In the request for a preliminary ruling,

[156] The study will be ready by the second half of 2016.

[157] http://ec.europa.eu/justice/discrimination/files/hle2015_report_en.pdf

[158] Even though the ruling dates November 2014, it was still included in the 2015 annual report as it was not covered in the 2014 annual report.

[159] CJEU, judgment of 13 November 2014 in case C-416/13 *Mario Vital Perez v Ayuntamiento de Oviedo*.

the referring court asked the CJEU to provide guidance on the interpretation of both Article 21 of the Charter and the provisions of Directive 2000/78.

The CJEU held in its judgement that the age requirement provided for in the Spanish Law was based on the training requirements of the post in question and the need for a reasonable period of employment before retirement or transfer to another activity. These objectives were thus capable of justifying a difference in treatment on grounds of age 'objectively and reasonably' and 'within the context of national law', as provided for in Article 6(1) of Directive 2000/78. However, the CJEU held that no evidence had been submitted to the Court to show that the age limit for recruitment was appropriate and necessary in the light of the objective of ensuring training of the officers concerned. According to the information provided by the referring court, the age of retirement for local police officers is fixed at 65 years of age. Although the referring court also referred to transfer to another activity at the age of 58, this was merely an option offered to local police officers at their request and had no bearing on retirement age. Against this background the CJEU concluded that national legislation such as that at issue in the main proceedings, which fixes a maximum recruitment age of 30 for local police officers, could not be considered necessary in order to ensure that those officers have a reasonable period of employment before retirement for the purposes of point (c) of the second subparagraph of Article 6(1) of Directive 2000/78.

In 2015 the Belgian and French Supreme Courts (Cour de Cassation) submitted to the CJEU two requests for preliminary rulings in cases **C-157/15 Achbita**[160] and **C-188/15 Bougnaoui**[161], respectively, requesting the CJEU to interpret Directive 2000/78/EC. The two cases both concern dismissals of female Muslim workers (a receptionist and a computer engineer respectively) by private companies because they were wearing Islamic headscarves at work[162].

2. Manifestations of intolerance, racism and xenophobia in the EU

Policy

While the effective application of provisions criminalising hate speech is first and foremost dependent on a robust system of application and enforcement of criminal law sanctions against the individual perpetrator of hate speech, this policy must be complemented with measures geared at ensuring that hate speech online is expeditiously removed by online intermediaries, and social media platforms. The Commission's concern with the surge of hate speech online was reflected in the Annual Colloquium on Fundamental Rights "Tolerance and respect: preventing and combating Antisemitic and anti-Muslim hatred in Europe" which took place on 1-2 October 2015. The participants to the Colloquium underlined the importance of stepping up action to prosecute instances of online hate speech and cooperating with IT companies and the media to combat manifestly illegal hate speech and promote counter-narratives emanating from civil society.

[160] CJEU, application of 5 June 2015 in case C-157/15 *Achbita*, judgment pending.

[161] CJEU, application of 19 June 2015 in case C-188/15 *Bougnaoui*, judgment pending.

[162] See above under Article 10.

Since then, the Commission has initiated a dialogue with major IT companies representing different business models from operating systems, to social networking platforms and hosts of user generated content as well as microblogs. The work ties in with the Digital Single Market Strategy launched in May 2015 and is conducted in full synergy with the 'EU IT Forum' on cooperation with the industry on tackling terrorism which was launched on 3 December 2015..

As regards funding, for the period 2014-2020 the Rights, Equality and Citizenship programme supports the development of efficient monitoring and reporting mechanisms for racist and xenophobic hate speech on the internet and on hate crime. The Commission made available under the Rights, Equality and Citizenship Programme €5.4 million to support projects of national authorities and civil society on training and capacity building, exchanging best practices to prevent and combat racism and xenophobia, and empowering and supporting victims of hate crime and hate speech.

Furthermore, in an informal meeting in Paris in March 2015, the Education Ministers adopted a Declaration on promoting citizenship and the common values of freedom, tolerance and non-discrimination through education[163]. They identified a number of actions at national and European level to promote freedom of thought and expression, social inclusion and intercultural dialogue; to prevent and tackle marginalisation, intolerance, racism, radicalisation and discrimination in all its forms; and to preserve a framework of equal opportunities for all.

In May 2015, the Ministers responsible for Youth adopted Conclusions on youth work and cross-sectorial policy cooperation highlighting the contribution of youth policy to the social inclusion of young people and the prevention of their marginalisation, including those with fewer opportunities[164].

In its Conclusions adopted in May 2015, the Culture Council underlined the potential of cultural and creative cross-overs to improve social inclusion and community life through cultural and creative activities.

In May 2015, the Ministers for Sport endorsed Conclusions on the role of grassroots sport in developing transversal skills, especially among young people[165]. The text underscores that sport contributes to the development of social competences and positive attitudes and can support the fight against intolerance and promote an open-minded society.

Application by Member States

In accordance with Protocol no. 36 to the Lisbon Treaty, as from 1 December 2014, the Commission acquired the power to oversee under the control of the Court of Justice, the application of

[163] Available at: http://ec.europa.eu/education/news/2015/documents/citizenship-education-declaration_en.pdf. See also below Article 14

[164] Council conclusions on enhancing cross-sectorial policy cooperation to effectively address socio-economic challenges facing young people, OJ C 172, 27.5.2015, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015XG0527(01)

[165] Council conclusions on maximising the role of grassroots sport in developing transversal skills, especially among young people, OJ C 172, 27.5.2015, p. 8.

Framework Decisions, including the Framework Decision 2008/913/JHA[166]. On that basis, the Commission in 2015 entered into bilateral dialogues with thirteen Member States on remaining gaps in their transposition and practical implementation of this legislation with a view to ensuring full and correct transposition and implementation of the Framework Decision on racism and xenophobia.[167]

At the same time, the Commission has worked together with the Member States and other key actors, including key civil society organisations and relevant international monitoring bodies, to make a real difference on the ground through the establishment of Experts' fora and platforms facilitating the exchange of best practices (Commission Experts' Group). This is particularly important in the area of combating hate crime and hate speech since it remains for the national authorities to determine, according to the circumstances and context of each situation, whether the case amounts to incitement to racist or xenophobic violence or hatred.

Case Law

An important judgment[168] was delivered by the European Court of Human Rights for failure to conduct an effective investigation by the national authorities as regards a racist attack. In ***Balázs v Hungary*** the Hungarian authorities decided to discontinue due to lack of evidence the investigations aimed at unmasking the bias motivation of the offense committed by a penitentiary officer. The claimant relying on Article 14 of the ECHR (prohibition of discrimination) read in conjunction with Article 3 of the ECHR (prohibition of inhuman or degrading treatment), complained that the authorities failed to conduct an effective investigation into the racist attack against him, and in particular that they did not take sufficient action to establish a possible racist motive for the assault. The ECtHR upheld the claimant's position stating that the failure to identify the racist motive in the face of powerful hate crime indicators impaired the adequacy of the investigation to an extent that is irreconcilable with the State's obligation to conduct vigorous investigations in this field and found a breach on Article 14 of the ECHR read in conjunction with Article 3 of the ECHR.

3. EU Framework for National Roma Integration Strategies

Legislation and Policy

In the context of the EU Framework for National Roma Integration Strategies up to 2020, the European Council Conclusions on 23 June 2011, and the Council Recommendation on Roma Integration adopted on 9 December 2013[169], the issues Roma are facing have remained a high priority for the Member States, the European Institutions and civil society in the year 2015.

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[166] Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328, 6.12.2008, p.55.

[167] The Commission will continue this exercise with the remaining Member States throughout 2016 and may if necessary proceed to the initiation of infringement procedures.

[168] ECtHR, judgement of 20 October 2015 in case of *Balázs v Hungary*, application no 15529/12.

[169] Available at: http://ec.europa.eu/justice/discrimination/roma/index_en.htm

Discrimination of Roma and Anti-Gypsyism were discussed at this year's European Platform for Roma inclusion (16-17 March 2015). The debates at the Platform fed the following overall conclusions:

• There is wide recognition among stakeholders that discrimination and racism against Roma are structural barriers which are in conflict with the core values of the European Union and which hamper the process of Roma integration and there was consensus that promoting equal rights and opportunities for Roma is the way forward.

• It was agreed that the fight against the increasing level of intolerance against Roma should start already in education and would require inclusive reform of mainstream education systems. Education in this respect should be seen in a wider perspective, starting with teachers, future educators, mainstreaming awareness in the general population about who the Roma are; including facts about Roma history (Roma Holocaust) and culture in school curriculum, promoting diversity and equality in education, as well as educating on the forms of discrimination and anti-Gypsyism. The role of Roma civil society and Roma themselves as key actors in this process is of outmost importance.

• The need for structured dialogue at EU level among all stakeholders was reconfirmed. The European Platform for Roma Inclusion brings a clear added value.

• Participants agreed that it is important to build trust among stakeholders of Roma integration at national and local levels. To this end national Roma platforms should be set up with support by the Commission to bring together all stakeholders from the national, regional and local levels. As a first step, documents could be drafted in the national context defining participation and responsibilities of all those taking part in the national platform. National platforms should be understood as networks linking actors of change from various institutions in permanent dialogue and cooperation on implementation and monitoring of National Roma Integration Strategies. National Roma platforms should feed the thematic preparation of the European Platform.

• The European Platform for Roma inclusion should focus on key thematic issues (e.g. inclusive education, employment, antidiscrimination) and should be closely linked to the European policy cycle on monitoring NRIS by showcasing inputs by Member States and civil society to feed the assessment by the Commission of the implementation of the EU Framework and the Council Recommendation on effective Roma integration measures in the Member states.

• A reflection should take place on how to ensure inclusive open participation of all stakeholders in national Roma Platforms and in the European Platform and how the link between national platforms and the European platform is ensured by participants.

The Commission welcomed and strongly supported the European Parliament resolution of 15 April 2015 on Anti-Gypsyism in Europe and EU recognition of the memorial day of the Roma genocide during the Second World War

In June 2015, the Commission published the 2015 report on the implementation of the EU Framework for National Roma Integration Strategies[170]. The report shows that the Member States continue making progress in Roma integration, but further efforts are still needed. Progress is made in the areas of funding, monitoring and reporting as well as in developing coordination structures involving various stakeholders. There are, however, many worrying developments that require further action from Member States, such as fighting discrimination and segregation, anti-Gypsyism and elimination of hate speech and hate crime.

The Commission has strengthened its dialogue with the EU Member States on Roma. A network of the Member States' National Contact Points for Roma integration which was set up in October 2012 has become a key interactive forum, where Member States can openly express their positions, exchange their views and cooperate among each other.

Moreover, the Commission has continued organising bilateral visits to the Member States bringing together the relevant national authorities as well as representatives of national civil society organisations to discuss the progress made in the implementation of the national Roma integration strategies. In addition, in the framework of the European Semester, dialogues with the Member States regarding the implementation of the Country Specific Recommendations related to Roma took place. Five countries received Country Specific Recommendations related to Roma in education in 2015[171], especially as regard inclusive education, access to good quality early childhood education and care, early school leaving and desegregation.

ROMED[172],, a programme jointly run by the Commission and the Council of Europe, is a training programme for mediators in the field of education, healthcare, access to employment and housing and other public services. Its objective is to increase the inclusion of Roma communities, especially with regard to access to and completion of school education, with a holistic perspective towards the specific challenges of the communities. The programme was initiated in 2011 and after having laid the foundations for quality mediation in Europe, the second phase of ROMED (ROMED2), which started in 2013, focuses on local contexts and in particular on how mediation can stimulate the participation of Roma communities for a more inclusive and democratic governance.

The ROMACT[173] Joint Programme of the European Commission and the Council of Europe aims at building the capacity of local authorities to design and implement strategies and policies which are inclusive of all, including Roma, and to use ESIF funds for that purpose..

Regarding the use of ESI Funds in tackling educational and spatial segregation, the Commission released a 'Guidance for Member States on the use of European Structural and Investment Funds in

[170] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the implementation of the EU Framework for National Roma Integration Strategies 2015, COM(2015) 299 final, 17.6.2015, available at: http://ec.europa.eu/justice/discrimination/files/roma_communication2015_en.pdf.

[171] Further information available at http://europa.eu/epic/docs/inv-children-csrs-2015.pdf

[172] Further information available at: http://romed.coe-romact.org/

[173] http://coe-romact.org/

tackling educational and spatial segregation'[174] which provides useful indications for managing authorities to design and implement non-segregation and desegregation interventions. ESI Funds investments, which may contribute to the extension of segregated educational and housing facilities, are strongly discouraged.

The EU's 7th Framework Programme for Research, Technological Development and Demonstration Activities (in particular Theme 8 - Social Sciences and the Humanities) financed a research project on "The Immigration of Romanian Roma to Western Europe: Causes, effects, and future engagement strategies" (MIGROM). It provides policy recommendations and is piloting new schemes for public engagement and outreach in the Roma community. [175] In 2015 an Extended Survey was finalized among communities of Romani migrants in France, Italy, Spain and the United Kingdom, and in their origin communities in Romania. Results are summarized in a policy brief.[176] Moreover, during 2015 the project worked in the framework of the formal agreements signed with the City Council of Granada, Lucena (Córdoba) and Bormujos (Seville), and the Spanish Red Cross in Andalusia. the work with local authorities consisted mainly in developing a continuous exchange of information, analysis and opinions. The group of social workers that participated in the First Authorities Local Workshop became a stable working group for the reflexive analysis of the daily social services related with Roma population.

Case Law

In its landmark judgment of 16 July 2015, the first CJEU case on Roma discrimination, case **C-83/14 Chez Razpredelenie**[177], the Court confirmed that the scope of the Race Equality Directive (2000/43/EC) cannot be defined restrictively – notably in view of the fact that the Directive is an expression, within the area under consideration, of the principle of equality, which is one of the general principles of EU law, as recognised in Articles 20 and 21 of the Charter.

More concretely, the CJEU held in this case that t**he installation of electricity meters at an inaccessible height in a district densely populated by Roma is liable to constitute discrimination on the grounds of ethnic origin when such meters are installed in other districts at a normal height.**

In its reasoning, the Court also referred, inter alia, to Article 21 of the Charter to find that the prohibition of discrimination on the grounds of ethnic origin in Directive 2000/43 applies, not only to persons who have a certain ethnic origin, but also to those who, although not themselves a member

[174]European Commission, Guidance for Member States on the use of European Structural and Investment Funds in tackling educational and spatial segregation, EGESIF_15-0024-01, 11.11.2015, available at: http://ec.europa.eu/regional_policy/sources/docgener/informat/2014/thematic_guidance_fiche_segregation_en.pdf.

[175]http://migrom.humanities.manchester.ac.uk/

[176] http://migrom.humanities.manchester.ac.uk/wp-content/uploads/2015/08/Policy_Briefing_June2015.pdf .

[177] CJEU, judgment of 16 July 2015 in case C-83/14, *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia*.

of the ethnic group concerned, suffer, together with the former, less favourable treatment or a particular disadvantage on account of a discriminatory measure.

Finally, the Court referred to Article 21 of the Charter to interpret the concept of direct discrimination based on race or ethnic origin. The Court pointed out that the presence in the district at issue of inhabitants who are not of Roma origin does not in itself rule out that the contested practice was imposed on account of the ethnic origin shared by most of that district's inhabitants (namely Roma ethnic origin). It will nevertheless be for the Bulgarian court to take account of all the circumstances surrounding that practice in order to determine whether it has in fact been imposed for such a reason of an ethnic nature and thus constitutes direct discrimination under the directive.

The evidence which may be taken into consideration in this connection includes, in particular, the fact that the practice at issue has been established only in districts which have Bulgarian nationals of Roma origin as the majority of their population. Also, the fact that the electricity distribution undertaking has asserted before the Bulgarian Commission for Protection against Discrimination that the damage and unlawful connections are mainly due to persons of Roma origin is capable of suggesting that the contested practice is based on ethnic stereotypes or prejudices.

The CJEU noted that the Bulgarian court will also have to take account of the compulsory, widespread and lasting nature of the practice complained of. That practice affects without distinction all the inhabitants of the district concerned, irrespective of whether their individual meters have been the subject of abuse and, as the case may be, who has committed that abuse. Thus, the practice at issue may be perceived as suggesting that the inhabitants of that district are, as a whole, considered to be potential perpetrators of unlawful conduct. In this context, the Court stated that the practice amounts to unfavourable treatment to the detriment of the inhabitants concerned on account of both its offensive and stigmatising nature and the fact that it is extremely difficult or even impossible for them to check their electricity meters for the purpose of monitoring their consumption.

Application by Member States

In April 2015 the Commission launched infringement proceedings concerning discrimination of Roma children in education in breach of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin against a second Member State, after infringement proceedings against a first Member State had been launched in September 2014. The Commission is currently also assessing the situation in other Member States.

4. Fight against homophobia

Legislation and Policy

In December 2015, the Commission has made explicit its commitment to combat discrimination, when defining and implementing all its policies and activities (as enshrined in Article 10 TFEU), by

defining a **List of Actions to advance LGBTI Equality** to be implemented during the period 2016-2019.[178]

Furthermore, in the first half of 2015 the Commission has launched a **study on the business case of diversity for enterprises, cities and regions with focus on sexual orientation and gender identity.**[179] The study includes the production of a publication on the business case for LGBTI inclusion in companies as well as the benefits of LGBTI diversity for cities and regions. Moreover, it will explore the economic case of LGBTI non-discrimination and inclusion.

Case law

On 29 April 2015, the CJEU issued a preliminary ruling in case *Geoffrey Léger*[180] regarding a French Decree which provided a permanent deferral from blood donation for men who have had sexual relations with another man. The French law was based on a high prevalence of HIV infections in this group of potential donors in France and the high risk of acquiring severe infectious diseases that can be transmitted by blood.

The request for a preliminary ruling concerned the issue whether such permanent deferral could be considered compatible with Directive 2004/33/EC on certain technical requirements for blood and blood components[181], according to which persons whose sexual behaviour puts them at a high risk of contracting severe infectious diseases that can be transmitted by blood are subject to a permanent deferral from blood donation.

After having maintained that, first of all, it should be determined whether available medical and scientific knowledge on the epidemiological situation in France can lead to conclude that, in France, men who have had sexual relations with other men are at a high risk of acquiring severe infectious diseases such as HIV that can be transmitted by blood, the Court focussed on the issue whether, provided that this is the case, the permanent contraindication to blood donation should be regarded as consistent with fundamental rights and, in particular, with the principle of non-discrimination on the basis of sexual orientation reaffirmed by Article 21 of the Charter.

The Court maintained that, although the permanent deferral provided for in French law helps to minimise the risk of transmitting an infectious disease to recipients and, therefore, contributes to the general EU objective of ensuring a high level of human health protection as recognised by the EU in Article 152 EC [now Article 168 TFEU], it constitutes a restriction on fundamental rights which may

[178] This includes an awareness-raising campaign in 2016 to improve social acceptance of LGBTI people. The Commission will provide regular feedback to the Council, the European Parliament, the Member States and civil society organisations on progress made in the implementation of the actions.
[179] The study is expected to be completed by the first half of 2016.
[180] CJEU judgment of 29 April 2015 in case C-528/13 *Geoffrey Léger v Ministre des affaires sociales et de la santé*.

[181] Commission Directive 2004/33/EC of 22 March 2004 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components, OJ L 091 30.3.2004, p. 25.

not be consistent with the principle of proportionality. This would be the case where effective techniques for detecting severe diseases that can be transmitted by blood or, in the absence of such techniques, less onerous methods for ensuring a high level of health protection for recipients other than permanent deferral from blood donation existed – something which the Court left for the national judge to determine.

Currently, men who have had sex with men are considered by all Member States as being at an increased risk of being infected with HIV and are therefore subject to either temporary or permanent deferrals, also in light of figures compiled by the European Centre for Disease Prevention and Control. The Commission will continue its discussions with Member States on the practical implications of this important judgment.

Parliamentary Questions and letters

The Commission received a considerable number of parliamentary questions on its policies on LGBTI[182] people. In its responses, the Commission highlighted its commitment to fight discrimination on the grounds of sexual orientation and gender identity, the importance of the adoption of the proposed Equal Treatment Directive by the Council and the non-legislative activities that the Commission carries to support this group, including peer learning initiatives between Member States, awareness raising, data collection and financial support to civil society.

A number of parliamentary questions[183] concerned the ban for men who had had sexual relations with other men from giving blood and they inquired accordingly about the Commission's position regarding CJEU ruling in Case C-528/13 *Geoffrey Léger v Ministre des affaires sociales et de la santé* of 29 April 2015. The Commission replied that Directive 2004/33/EC[184] lays down deferral criteria for blood donors including deferrals of persons whose sexual behaviour puts them at risk of acquiring infectious diseases. Most Member States apply either temporary or permanent deferrals of men who have had sex with men to protect recipients. This approach is supported by data compiled by the European Centre for Disease Prevention and Control which shows that in 2013 in the EU 54% of HIV diagnoses in men were transmitted through sex between men. While testing methods have improved in recent years, the risk of under-detection has not been completely removed and the Commission continues to encourage all Member States to collect more data on incidence of such diseases in specific population groups and supports the ongoing work of the Council of Europe to this end.

The Commission also received an Inquiry by the Danish National Organisation for Gay Men, Lesbians, Bisexual and Transgender Persons concerning a case of a HIV-positive gay man and a woman who wish to have a child together. They were denied a sperm donation on the basis of Commission

[182] Lesbian, Gay, Bisexual, Transgender, Intersex

[183] Questions E - 006958/15; E - 007026/15; E- 007052/14; E - 007104/15; E - 007504/15; E - 011959/15.

[184] Commission Directive 2004/33/EC of 22 March 2004 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components, OJ L 091 30.3.2004, p. 25.

Directive 2006/17/EC which implements Directive 2004/23/EC[185] as regards certain technical requirements for the donation, procurement and testing of human tissues and cells.[186]

In Denmark the medically assisted reproduction - sperm donation is provided to opposite gender couples (i.e. couples which have an intimate physical relationship) where the man is HIV positive. However, where the mother and farther are not partners (they do not have an intimate physical relationship) and the man is HIV positive, sperm donation is denied on the basis of health considerations and Commission Directive 2006/17/EC which states in its Article 1 b that "partner donation' means the donation of reproductive cells between a man and a woman who declare that they have an intimate physical relationship". The organisation inquired about the compatibility of the refusal with the prohibition of discrimination on the grounds of sexual orientation. The Commission replied that Directive 2004/23/EC and Directive 2006/17/EC do not discriminate against donors based on their sexual orientation. Article 3 of Directive 2006/17/EC sets out the selection criteria for donors of reproductive cells. Pursuant to Annex III to the Directive, these selection criteria are different for donations by partners and for donations by persons other than partners. Recital 5 clarifies that the different treatment between partner and non-partner donations is justified, taking into account that "the risk for the recipient is considered less than for donation from third parties". The differentiation in treatment is not based on sexual orientation, but on medical risks – in line with the EU's mandate to ensure high quality and safety standards in the tissues and cells sector.

185 Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells**,** OJ L 102, 7.4.2004, p.48

186 Commission Directive 2006/17/EC of 8 February 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards certain technical requirements for the donation, procurement and testing of human tissues and cells**,** OJ L 038, 9.2.2006, p.40

Article 22 – Cultural, religious and linguistic diversity

Article 22 stipulates that the Union shall respect cultural, religious and linguistic diversity.

Policy

Article 17(3) TFEU stipulates that the Union shall maintain an open, transparent and regular dialogue with churches or religious associations or communities and philosophical and non-confessional organisations.[187] This dialogue takes place at various levels in the form of written exchanges, meetings or specific events. Interlocutors are invited to contribute to the EU policymaking process through the various written consultation processes launched by the European Commission. The dialogue contributes to the promotion of religious diversity.

On 17th of March 2015, following the terrorist attacks in Paris and Copenhagen, the EU education ministers and the EU Commissioner for education, training, youth and sport agreed to strengthen their action in the field of education and signed the "Declaration on promoting citizenship and the common values of freedom, tolerance and non-discrimination through education". The Declaration links inclusive education for all children and young people with the promotion of citizenship, mutual respect, fundamental values, diversity and gender equality.[188]

In June the sixth annual high-level meeting with representatives from philosophical and non-confessional organisations from across Europe was held on the topic "Living together and disagreeing well". It was followed two weeks later by the eleventh annual high-level meeting with religious leaders, on the same subject.

In the context of the Article 17 dialogue, on 2 December the Commission held a dialogue seminar with 50 representatives from COMECE, CEC and respective faith-based NGOs on the question: "Beyond the refugee crisis: Integration of migrants in society and the labour market". It showed the serious and substantial involvement of church organisations in the current refugee crisis. The Commission also held a dialogue seminar with religious interlocutors on "Common actions to fight trafficking in human beings" and a dialogue seminar with the Association Européenne de la Pensee Libre - AEPL, on the Transatlantic Trade and Investment Partnership (TTIP) agreement.

On 1-2 October the Commission hosted the **first Annual Colloquium on Fundamental Rights, on the subject "Tolerance and respect: preventing and combating Antisemitic and anti-Muslim hatred in Europe"**. The Colloquium gathered all relevant stakeholders including religious and community leaders. The following key actions were identified from the discussions:

- Empower those active at local level to build a culture of tolerance and respect, in particular through education;
- Fight hate speech by working with IT companies, civil society and the media;
- Ensure implementation of hate crime laws and new EU rules on protecting the rights of victims of crime and improve recording and data collection of hate crime incidents;

[187] See also above under Article 10 on freedom of thought, conscience and religion.

[188] See also above under Article 21, section 2.

- Promote diversity and enforce and strengthen non-discrimination rules.

It was held that Community leaders are a vaccine to misconceptions and need to be supported in the breaking of stereotypes and the developing of counter narratives, reaching out to public at large and breaking indifference.

As a direct follow-up to the Colloquium on Fundamental Rights and the Paris Declaration of Ministers of Education in March, the Commission is prioritising funds in order to support Member States fostering inclusive education and mutual understanding amongst children and young people, as well as for projects and initiatives in the area of inclusive tolerance, racism, xenophobia and non-discrimination. To help ensure coordination of European efforts on Antisemitic and anti-Muslim hatred, taking into account the specific features of each phenomenon, **the Commission nominated two coordinators, one for anti-Semitism and one for Islamophobia**.

Furthermore, in light of the unprecedented numbers of refugees and asylum seekers arriving in the EU, in November 2015, national Ministers for culture agreed to create a new policy working group on intercultural dialogue with a special focus on the integration of migrants and refugees in societies through the arts and culture. This takes the form of a series of meetings of experts nominated by national governments, under the Open Method of Coordination.

The EU Work Plan for Culture (2015-2018), agreed by the European Ministers for culture, foresees actions to protect and promote the diversity of cultural expressions - in line with the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, to which the EU is a party; and to foster the contribution of culture to social inclusion. In 2015, the EU continued to work with UNESCO to implement the 2005 Convention, within the European Union and with partner countries, and celebrated its 10th anniversary with a high-level event in Brussels in June.

In 2015, the €1.46 billion Creative Europe programme, in support of the culture and audio-visual sectors, supported actions under the EU Work Plan for Culture. This included transnational policy cooperation in the EU and beyond, that promote openness towards other cultures and the integration of refugees and migrants.

Article 23 – Equality between women and men

According to Article 23 equality between women and men must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Policy

In May 2015, the Commission adopted a **Report on the application of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services**. The report covers in particular the implementation in the Member

States of the ruling in *Test-Achats*[189], where the CJEU invalidated Article 5(2) of the Directive, which permitted the maintenance of sex-based differentiations in the provision of insurance services (provided that it was based on relevant and accurate actuarial and statistical data), as incompatible with Articles 21 and 23 of the Charter. The unisex rule now applies without derogation in relation to the calculation of individuals' premiums and benefits in new contracts.

Within the framework of the Common Fisheries Policy, gender balance in the fisheries sector, in particular the developing role of women, is a topic to which the Commission is paying increased attention. The **European Maritime and Fisheries Fund** (EMFF) Regulation No 508/2014[190] includes a number of provisions supporting women's involvement in the sector. In particular during the negotiations of the EMFF Operational Programmes in 2015, the Commission closely monitored how Member States integrate gender mainstreaming and how they implement the gender specific indicators the Commission has defined for its continuous monitoring and evaluation exercises.[191]

The November 2015 Joint Report of the Council and the Commission on the implementation of the Strategic Framework for European cooperation in education and training (ET 2020) underlines the need to address gender gaps and unequal opportunities for women and men in education and training and to promote gender equality in study subject choices and careers[192].

Case law

In the case C-222/14 *Maïstrellis*[193], the Court referred to Article 33(2) of the Charter to interpret the provisions of the Parental Leave Directive (96/34/EC)[194] and the Gender Equality (Recast) Directive (2006/54/EC)[195]. Article 33 deals with family and professional life and its second paragraph stipulates that everyone shall have the right to parental leave following the birth of or adoption of a child. The CJEU ruled that the provisions of the two above mentioned directives precluded national provisions under which a male civil servant is not entitled to parental leave in a situation where his wife does not work or exercise any profession unless it is considered that due to a serious illness or injury his wife is unable to meet the needs related to the upbringing of the child.

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[189] CJEU, judgment of 1 March 2011 in case C-236/09 *Test-Achats*.

[190] Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council, OJ L 149, 20.5.2014, p. 1.

[191] MEP question E-010915/2015.

[192] Adopted on 23 November 2015. See: http://europa.eu/rapid/press-release_IP-15-5568_en.htm

[193] CJEU, judgment of 16 July 2015 in Case C-222/14 *Maïstrellis*.

[194] Directive 96/34/EC on parental leave has been replaced by Directive 2010/18/EU on parental leave. Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, OJ L 68, 18.3.2010, p. 13.

[195] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26.7.2006, p. 23.

Article 24 – The rights of the child

Article 24 of the Charter recognises that children are independent and autonomous holders of rights and prescribes that children have the right to protection and care necessary for their well-being. It codifies their right to participation, by emphasizing that children may express their views freely, and that such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. Article 24 also stipulates that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interest must be a primary consideration. Lastly, Article 24 prescribes that every child shall have the right to maintain on a regular basis a personal relationship and direct contact with his or her parents, unless that is contrary to his or her interests. In line with Article 3(3) of the Treaty on European Union rights of the child are a priority for the Commission.

Legislation

In 2013, the European Commission had tabled a proposal for a **directive on procedural safeguards for children suspected or accused in criminal proceedings**[196], to contribute to creating a more child-friendly justice system**.** This directive proposes a number of safeguards for children, including assistance by a lawyer and specific treatment of children deprived of liberty. In 2015, trilogue discussions continued, further to the Council general approach of June 2014.[197] In December 2015, the Council and the European Parliament agreed on a final text.[198]

Policy

The **9th European Forum on the rights of the child**[199] focused on **integrated child protection systems**, as a follow-up to previous discussions in 2012 and 2013 and a public consultation held in 2014, as well as a mapping of national child protection systems conducted in 2014 by the EU Agency for Fundamental Rights. A reflection paper[200] on coordination and cooperation in integrated child

[196] Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings, COM(2013) 822 final, 27.11.2013, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52013PC0822:en:NOT.

[197]Further information available at: http://www.europarl.europa.eu/meetdocs/2014_2019/documents/libe/dv/hearing_council_general_approach_/hearing_council_general_approach_en.pdf

[198] http://www.consilium.europa.eu/en/press/press-releases/2015/12/16-procedural-safeguards-for-children-in-criminal-proceedings/; http://www.europarl.europa.eu/news/en/news-room/20160303IPR16952/MEPs-strengthen-rights-of-children-in-criminal-proceedings; see also below under Art.48. It should enter into force in 2016, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_15272_2015_INIT&from=EN.

[199] Further information available at: http://ec.europa.eu/justice/fundamental-rights/rights-child/european-forum/ninth-meeting/index_en.htm

[200] Available at: http://ec.europa.eu/justice/fundamental-rights/files/2015_forum_roc_background_en.pdf

protection systems formed the basis of discussions and proposed 10 principles for integrated child protection systems. Representatives of a wide range of organisations involved in the national child protection systems of all Member States, including justice, social affairs, health and education authorities, as well as Members of the European Parliament, NGOs, experts and professionals working with and for children exchanged good practices and provided input to the 10 principles set out in the reflection paper. While maintaining the need for a comprehensive approach to child protection, the Forum featured specific sessions on the prevention of violence against children; identification, reporting and referral; investigation, treatment, follow-up and judicial involvement; and effective procedures.

Application by the Member States

A number of Member States have adopted new legislation to complete the implementation of the child sexual abuse directive 2011/93/EU, which improves the protection of child victims of sexual abuse, the prosecution of offenders and the prevention of the crimes.

The Commission in 2015 pursued with Reasoned Opinions the infringement procedures open against seven Member States for failure to notify complete implementation of the child sexual abuse directive 2011/93/EU.

Policy

The final results of a **study to collect existing data on children's involvement in criminal, civil and administrative judicial proceedings**[201] were published in 2015. The first part on children's involvement in criminal judicial proceedings was published in 2014, and the second part on children's involvement in civil justice and in administrative judicial proceedings was published in June 2015. The study gathers all available data, identifies gaps in data and procedural safeguards, and provides examples of good practices in the 28 Member States. It also provides a contextual narrative overview per Member State describing the legal and policy situation as at 1 June 2012 (and summarised for the EU as a whole) with regard to children's involvement in judicial proceedings. The overview describes when and how children are involved before, during and after judicial proceedings and aims to ensure that data can be interpreted correctly. A policy brief presents the voluminous findings of the three strands of the study, examining the extent to which children are guaranteed effective access to, and adequate treatment in, criminal, civil and administrative judicial proceedings across the EU, focusing on 10 key safeguards.[202]

The results of the **study to evaluate legislation, policy and practice on child participation in the EU**[203] were published in June 2015. The evaluation provides a comprehensive overview of the legal

[201] Available at: http://ec.europa.eu/justice/fundamental-rights/rights-child/friendly-justice/index_en.htm

[202] Reports available at: http://bookshop.europa.eu/en/children-s-involvement-in-criminal-civil-and-administrative-judicial-proceedings-in-the-28-member-states-of-the-eu-pbDS0415479/?CatalogCategoryID=Vhiep2OwweYAAAFOlgAi8_Kp ; Data available at: www.childreninjudicialproceedings.eu

[203] http://bookshop.europa.eu/en/evaluation-of-legislation-policy-and-practice-of-child-participation-in-the-eu-pbDS0614240/

and policy framework for child participation at Member State and EU levels; particular structures and approaches, and the impact of child participation. The results provide a baseline for the participation of children in the development and implementation of actions and policies that affect them, for individual children, groups of children and children as a group. In addition to the main report[204] and research summary[205], deliverables included a child-friendly summary[206], and a report for each Member State[207], analysing its particular situation and pointing to good practice. A resource catalogue[208] of child participation tools, methodology and materials was also produced to facilitate efforts to ensure respect of the child's participation rights.

The European Union's research programmes (FP7 and Horizon 2020) have been supporting research on Children and Youth participation as well as on children well-being[209].These projects provide evidence for policy making but also examples of contribution of children and young people to research processes. As an example, the FP7 project MYWEB – Measuring youth well-being - during 2015 engaged directly with children and young people to explore their understandings of well-being, in particular to inform how a survey might best approach the subject. A socio-demographically contrasting sample of 440 children aged from 9 to 18 were included in semi-structured interviews and focus groups.

Further to the 2013 Recommendation on Investing in Children[210], the European Commission issued **Country-Specific Recommendations** in 2015 to 14 Member States) relating to children, covering, amongst others, education and skills and poverty and social inclusion.[211]

In the context of the EU2020 Strategy and the European Semester in 2015, two EU Member States received country-specific recommendations which aim to improve accessibility, affordability and quality of **early childhood education and care**. In addition, two Member States were invited to step up their efforts in the field of early school leaving; and six Member States received recommendations

[204] Available at: http://bookshop.europa.eu/en/evaluation-of-legislation-policy-and-practice-of-child-participation-in-the-european-union-eu--pbDS0514101/

[205] Available at: http://bookshop.europa.eu/en/evaluation-of-legislation-policy-and-practice-of-child-participation-in-the-eu-pbDS0614240/?CatalogCategoryID=cOwKABstC3oAAAEjeJEY4e5L

[206] Available at: http://bookshop.europa.eu/en/evaluation-of-children-s-participation-2012-2014-eu-study-pbDS0714077/?CatalogCategoryID=cOwKABstC3oAAAEjeJEY4e5L

[207] Available at: http://bookshop.europa.eu/en/evaluation-of-legislation-policy-and-practice-of-child-participation-in-the-european-union-eu--pbDS0514101/related/?PublicationKey=DS0514101&CatalogCategoryID=cOwKABstC3oAAAEjeJEY4e5L

[208] Available at: http://bookshop.europa.eu/en/evaluation-of-legislation-policy-and-practice-of-child-participation-in-the-eu-pbDS0614241/?CatalogCategoryID=cOwKABstC3oAAAEjeJEY4e5L

[209]http://ec.europa.eu/research/social-sciences/pdf/project_synopses/kina27205enc.pdf#view=fit&pagemode=none

[210] Commission Recommendation 2013/112/EU, Investing in children: breaking the cycle of disadvantage, OJ L 59, 2.3.2013, p. 5. Available at: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013H0112

[211] Available at: http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm

to improve social inclusion in education and to cater for the needs of the disadvantaged, including the Roma.

Fostering generalised, equitable access to affordable high-quality early childhood education and care, especially for the disadvantaged, and taking forward the Quality Framework in this area, was one of the concrete issues identified in the Joint Council-Commission report on the implementation of the "Education and Training 2020"[212] framework on which cooperation should be promoted.

On 28 and 29 October 2015, the Commission organised the Safer Internet Forum 2015 with a theme of 'Breaking down barriers for a better internet'. The Forum, amongst others, focused on rights of the child online, with keynote speakers on the Convention on the rights of the child as well as a separate session on realising children's rights online.[213]

The protection of the human rights of children in migration is a cross-cutting priority for the Commission and the EU as a whole. In June 2015, the European Migration Network (EMN)[214] published its study on policies, practices and data on unaccompanied children/minors in the EU Member States and Norway. This study is an update of a previous EMN Study carried out in 2008-2009 and aims to provide a comparative analysis of (Member) States' policies and practices to safeguard unaccompanied children in the EU, from the moment they arrive at the border or are intercepted on EU territory until a durable solution is found. A synthesis report[215] with accompanying annexes[216], as well as national reports[217] detailing specific (Member) States' policies and practices has been published. Key findings and messages from the Study are also available in a short EMN Inform.[218]

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[212] 2015 Joint Report of the Council and the Commission on the implementation of the strategic framework for European cooperation in education and training (ET 2020), OJ C 417, 15.12.2015, p.25.

[213] https://www.betterinternetforkids.eu/web/portal/policy/safer-internet-forum

[214] Further information available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/index_en.htm

[215] European Migration Network, Synthesis Report for the EMN Focussed Study 2014 Policies, practices and data on unaccompanied minors in the EU Member States and Norway, Synthesis Report, May 2015, Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_policies_practices_and_data_on_unaccompanied_minors_in_the_eu_member_states_and_norway_synthesis_report_final_eu_2015.pdf

[216] European Migration Network, Synthesis Report for the EMN Focussed Study 2014 Policies, practices and data on unaccompanied minors in the EU Member States and Norway, Annexes to the Synthesis Report, May 2015, Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_policies_practices_and_data_on_unaccompanied_minors_in_the_eu_member_states_and_norway_annexes_to_the_synthesis_report_eu_2015.pdf

[217] Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/unaccompanied-minors/2014/index_en.htm

[218] Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/informs/results/unaccompanied-minors/index_en.htm

In the **2015 Joint Report** on the implementation of the ET 2020 strategic framework for cooperation in education and training, the Commission and the Member States advocated effective action to provide inclusive education and training for all learners, focusing on disadvantaged groups such as newly arrived migrants and people with a migration background[219].

Case law

In the *Bradbrooke* case[220], on parental responsibility, the Court paid consideration to Article 24 of the Charter. The main question referred to the Court was to ascertain to what extent the provisions of Regulation (EC) 2201/2003 are intended to govern the allocation of domestic jurisdiction between the courts of the Member State where the wrongfully removed child was habitually resident, in a situation where a non-return order has been adopted in the Member State where the child is present. For such situations Regulation "Brussels IIa" contains specific rules in Articles 11(6)-(8). The Court concluded that these special provisions of the Regulation do not preclude, as a general rule, a Member State from allocating to a specialised court the jurisdiction to examine questions of return or custody with respect to a child in the context of the procedure set out in those provisions, even where proceedings on the substance of parental responsibility with respect to the child have already, separately, been brought before a court or tribunal. But the Court also set as a standard the following: "However, it must be ensured that, in circumstances such as those of the main proceedings, such an allocation of jurisdiction is compatible with the child's fundamental rights as stated in Article 24 of the Charter and, in particular, with the objective that procedures should be expeditious".[221]

The *Bohez* case[222] concerns the issue of cross-border enforcement of a decision ordering a penalty payment which the court of the Member State of origin that gave judgment on the merits with regard to rights of access has imposed in order to ensure the effectiveness of those rights. The Court declared that such judicial decisions are to be recognized and enforced in another Member State in accordance with the rules of Regulation (EC) No 2201/2003 ("Brussels IIa"). In its judgment the Court underlined that "the importance of rights of access, which are essential for the protection of the right of a child to maintain a personal relationship and direct contact with both his or her parents, which is laid down in Article 24(3) of the Charter, prompted the EU legislature to provide for a specific scheme in order to facilitate enforcement of judgments concerning rights of access. That scheme is based on the principle of mutual trust between Member States in the fact that their respective national legal systems are capable of providing an equivalent and effective protection of fundamental rights,

[219] See above under Article 23

[220] C-498/14.

[221] C-498/14.

[222] CJEU judgment of 9 September 2015 in Case C-4/14 *Bohez*.

recognised at EU level, in particular, in the Charter (judgment in *Aguirre Zarraga*[223]), and precludes any review of the judgment given by the court of the State of origin".

Ruling of the Greek Council of State

In Greece, the Council of State referred to Article 24 of the Charter in a case concerning the request for annulment of the decision of the Deputy Minister of Education on the merging of primary schools, even though the case did not fall into the scope of application of the Charter. (Greece, Council of State, case no 239/2015 of 28 January 2015)

Article 25 – The rights of the elderly

Article 25 of the Charter provides that the European Union recognizes and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life. Whereas most of the policies directly affecting the realisation of these rights are in the competences and responsibilities of the individual member states, the European Union is committed to respect and promote these rights in relevant EU law, policies and programs.

In recent years, there have been significant advocacy efforts calling for enhanced international thinking and action on the human rights of older persons. Various stakeholders have called for more visibility and increased use of international human rights standards to address the situation of older persons. Multiple-discrimination appears as an essential component of any analysis, particularly when considering that age-related discrimination is often compounded by other grounds of discrimination, such as sex, socio-economic status, ethnicity, or health status.

Legislation

In order to cover equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation also outside the labour market, the European Commission had in 2008 proposed the equal treatment directive. While supported by the European Parliament, the proposal is blocked in the Council because of subsidiarity and cost concerns expressed mainly by one Member State.

Policy

The 2015 Eurobarometer survey on discrimination[224] studied perceptions of Europeans towards discrimination based on different grounds including age. The survey studied *i.a*. factors that are perceived to put applicants for a job at a disadvantage and found that (older) age (over 55) is most

[223] CJEU, judgment of 22 December 2010 in Case C–491/10 PPU, *Joseba Andoni Aguirre Zarraga v Simone Pelz*, para. 70

[224] Special Eurobarometer 437 " Discrimination in the EU in 2015" Available at: http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2077..

widely seen as a factor that could put job applicants at a disadvantage compared to all other discrimination grounds.

Article 26 – Integration of persons with disabilities

The Charter provides that the Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Legislation

On 2 December, the European Commission adopted the **European Accessibility Act**[225], an internal market proposal for a directive aiming to establish common accessibility requirements across the EU for certain key products and services and using the same requirements to further describe accessibility obligations existing in other EU legislation. The European Accessibility Act aims at helping people with disabilities at EU level to participate fully in society and facilitate the work of the industry by having common EU rules on accessibility. It intends to use the internal market potential to increase the availability of better accessible products and services and at more competitive price for consumers, notably consumers with disabilities and older consumers.

International Agreements

In 2015, the **UN Committee on the Rights of Persons with Disabilities** (the UN CRPD Committee) examined for the first time how the EU has been implementing the UN Convention on the Rights of Persons with Disabilities (UNCRPD). The EU concluded the UNCRPD in 2010.[226]

The UNCRPD is the first international legally binding human rights instrument setting minimum standards for a range of civil, political, social, economic and cultural rights for people with disabilities around the world.[227] It is also the first human rights treaty to which the EU is a party. All 28 Member States have signed the UNCRPD and 25 of these have ratified it, while the remaining three (Finland, Ireland and the Netherlands) are advancing towards ratification.

In June 2014, as a first step of this review process, the Commission had published a report to the UN on how the EU is giving effect to the UNCRPD in areas of EU competence, showing a tangible impact

[225] Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services, COM(2015) 615 final, 2.12.2015, available at: http://eur-lex.europa.eu/resource.html?uri=cellar:202aa1e4-99a0-11e5-b3b7-01aa75ed71a1.0021.02/DOC_1&format=PDF.

[226] Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, 2010/48/E, OJ L 23, 27.1.2010, p. 35, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0048&rid=1.

[227] Available at: http://www.un.org/disabilities/.

on the ground.[228] To prepare for the second phase - the dialogue, the UN CRPD Committee issued a list of questions in April 2015[229] and the Commission replied in writing in June 2015.[230]

During the dialogue meeting on 27 and 28 August in Geneva, the UN CRPD Committee engaged in question and answer sessions with the EU delegation led by the European Commission as focal point for the EU.

On 3 September, the UN CRPD Committee issued its concluding observations and made recommendations for follow-up. The final version of the Concluding Observations was adopted in October 2015.[231] Reporting within a year is required on the implementation of three recommendations, namely the adoption of the European Accessibility Act; the update of the EU declaration of competences under the CRPD; and a third recommendation on removing the Commission from the independent monitoring framework, and on ensuring that the framework has adequate resources to perform its functions. The Committee also recommends that the European Union consider the establishment of an inter-institutional coordination mechanism and the designation of focal points in each European Union institution, agency and body.

On 26 October, a meeting was organised with 15 EU level NGOs working on disability to discuss the concluding observations. The NGOs gave concrete suggestions on how to follow-up the UN recommendations.

To promote the implementation of the UNCRPD in the EU and the Member States, the European Commission organised on 29 April 2015 the 6th Work Forum bringing together the mechanisms responsible for implementation and monitoring at national and EU level as well as civil society and organisations of persons with disabilities.[232] The meeting discussed how to improve synergies between the EU and the national level in the implementation of the UNCRPD focussing on statistics and data collection, and the EU Structural and Investment Funds. The Forum also gave an opportunity to civil society organisations to present their alternative reports to the UN and to make proposals for improvement.

On 30 April the EU monitoring Framework for the UNCRPD[233] hosted the third meeting with national monitoring mechanisms established under the UNCRPD in the Member States. These mechanisms,

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[228] Commission Staff Working Document, Report on the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) by the European Union, SWD(2014) 182 final, 5.6.2014 available at: http://ec.europa.eu/justice/discrimination/files/swd_2014_182_en.pdf.

[229] List of issues in relation to the initial report of the European Union, CRPD/C/EU/Q/1, 17 April 2015 available at http://ec.europa.eu/social/BlobServlet?docId=13870&langId=en.

[230] Reply of the European Union to the list of issues in relation to the initial report of the European Union on the implementation of the UN Convention on the Rights of Persons with Disabilities, SWD(2015) 127 final, 19.6.2015 available at: http://ec.europa.eu/social/main.jsp?langId=en&catId=1138&newsId=2242&furtherNews=yes

[231] UN, Concluding observations on the initial report of the European Union, CRPD/C/EU/CO/1, 2 October 2015.

[232] Further information available at: http://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=1038&furtherEvents=yes

[233] Further information available at: http://ec.europa.eu/social/main.jsp?catId=1189&langId=en

required by the UNCRPD, are responsible for promoting, protecting and monitoring the implementation of the UN Convention at national level in the countries that have ratified the UNCRPD. They can take various forms, such as national equality bodies, Ombudspersons, National Human Rights Institutions, or monitoring committees with the participation of representatives of organisations concerned with the rights of persons with disabilities.

The meeting discussed how to improve the synergies and the communication between the EU and national level for an effective promotion, protection and monitoring of the rights enshrined in the UNCRPD within the EU's sphere of activity.

Policy

The overall framework for the implementation by the EU of its obligations under the UNCRPD is the **European disability strategy 2010–2020**.[234] Its aim is to create a barrier-free Europe that allows for the full and equal participation of persons with disabilities in line with the UNCRPD and Article 26 of the Charter.

On 22 December, the Commission launched a **public consultation** on the mid-term review of the European Disability Strategy 2010-2020 to gather opinions on what has been achieved so far in each of the eight main areas for action, the challenges faced by people with disabilities and how the EU should address them. The Commission also launched a public consultation using "easy to read" language and targeted to persons with intellectual disabilities.

Each year, the European Commission raises awareness of the disability challenges, through a conference celebrating the International Day of Persons with Disabilities that it organises with the **European Disability Forum**.[235] The 2015 conference on 7 and 8 December focused on children with disabilities and on inclusive education. The conference brought together a wide range of participants representing people with disabilities, disability rights organisations, policy-makers from the Member States, social partners, service providers, disability and accessibility experts and the European institutions.

FRA presented its new **report on targeted violence and hostility against children with disabilities**.[236] It includes data on legislative and policy instruments across the 28 EU Member States. It also looks at Member States' responses to such violence focusing in particular on good practices that can be shared.

The European Commission in 2015 organised, in partnership with the European Disability Forum, the **2016 Access City Award** which recognises accessibility initiatives improving equal access to city life

[234] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, COM(2010) 636 final, 15.11.2010, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:en:PDF

[235] More information available at: http://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=1069&furtherEvents=yes

[236] Available at: http://fra.europa.eu/en/project/2012/children-disabilities-targeted-violence-and-hostility

for people with disabilities.[237] ON 8 December 2015 Milan (Italy) was awarded the 2016 Access City Award not only because of its excellent and consistent accessibility efforts, but also for its commitment to promote employment of people with disabilities and independent living. Wiesbaden (Germany), Toulouse (France), Vaasa (Finland) and Kaposvár (Hungary) were also awarded for their efforts to improve accessibility for people with disabilities and the elderly.

As announced in the EU Citizenship Report 2013, the European Commission had started in 2013 a Project Working Group with Member States and civil society organisations to develop a mutually recognised **EU model of disability card** that would facilitate the freedom of movement of persons with disabilities within the EU allowing those who travel to another EU country to be treated in the same way as nationals, when it comes to access to culture, tourism, leisure, sports and transport. In **July 2015** the Commission launched a call for proposals to support national projects on a mutually recognised European Disability Card and associated benefits.[238] 8 members (out of 17) of the Project Working Group participated in the call and were awarded the grant..[239]

The European Commission through the **Rights, Equality and Citizenship (REC) programme (2014-2020)**[240] has made available for 2015-2017 up to **EUR 3 million each year** to support the running costs of EU-level NGOs promoting the rights of persons with disabilities. In 2015 a partnership was established with eight leading EU-level NGOs representing a diversity of disabilities and stakeholders.[241] Their work programmes support the implementation and monitoring of the UNCRPD at national and EU level. The work programmes of these NGOs addresses a wide variety of fundamental rights issues, such as independent living and the transition to community-based services, inclusive education, participation in policy-making, accessibility to goods and services, equality before the law and access to justice.[242] In addition, 2 other EU-level NGOs working on disability are supported from the EU Programme for Employment and Social Innovation (EaSI). [243]

Within the **European Semester**, the European Commission raised disability-related issues to Member States, most notably in the fields of employment, pension reform and long-term care. A disability perspective was included in most country analyses for 2015-2016.

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[237] More information available at: http://ec.europa.eu/social/main.jsp?catId=1141&langId=en

[238] Available at: http://ec.europa.eu/social/main.jsp?catId=629&langId=en&callId=456&furtherCalls=yes

[239] Selected projects will be implemented in 2016-17 (duration of 18 months). First results will be presented during the 2016 European Day of Persons with Disabilities conference.

[240] Regulation (EU) No 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020 ('REC Programme'), OJ L 354, 28.12.2013, p. 62.

[241] Award decision available at:
http://ec.europa.eu/justice/grants1/files/2014_spob_og_netw/award_decision_disabilities_en.pdf

[242] Call for proposals JUST/2014/SPOB/OG/NETW for the establishment of three-year framework partnership agreements with EU-level networks & operating grants for 2015, available at: http://ec.europa.eu/justice/grants1/calls/just_2014_spob_netw_en?htm.

[243] Call for proposals for the establishment of 4-year framework partnership agreements with EU-level NGO networks active in the promotion of social inclusion and poverty reduction or active in the promotion of microfinance and social enterprise finance at:
http://ec.europa.eu/social/main.jsp?catId=629&langId=en&callId=383&furtherCalls=yes.

The **European Academic Network of European Disability experts**, funded by the European Commission, published a report on the situation of persons with disabilities in accessing health care and related services and on their health condition, including country reports.[244] It further published a report on the disability perspective of the European Semester, including country reports. [245]

As regards accessibility of audiovisual media services, Article 7 of the Audiovisual Media Services Directive (AVMSD) encourages provision of accessibility services to people with visual or hearing disability. The European Commission regularly monitors transposition and implementation of this Article by Member States and has encouraged Member States and audiovisual regulatory authorities to transpose and enforce this provision.

The replies to the 2015 Public Consultation on AVMSD showed that the views on whether to introduce an explicit obligation of accessibility of audiovisual content in the AVMSD are split. The review of the AVMSD will explore the possibility to reinforce the current rules in alignment with the European Accessibility Act.

The EU's 7th Framework Programme for Research, Technological Development and Demonstration Activities (in particular Theme 8 - Social Sciences and the Humanities) financed a research project on "Making Persons with Disabilities Full Citizens" (DISCIT). Ended in January 2016, it provides policy lessons and recommendations to support active citizenship for persons with disabilities. [246] The final conferences held in Brussels in November 2015 presented the main findings and discussed the results and their practical implications with a wide range of stakeholders. Results are summarized in working papers and policy briefs addressing several specific issues.[247]

The **Union Civil Protection Mechanism** also caters for the rights of persons with disabilities. In March 2015, the Council adopted, in close consultation with the Commission, Conclusions on disability-inclusive disaster management.[248] The Conclusions call for measures for addressing the needs of people with disabilities in case of disaster, for strengthening their resilience to disasters and self-reliance as well as for raising public awareness regarding the action to be taken to assist persons with disabilities in the case of a disaster. The needs of people with disabilities are considered among the main priorities of the Union Civil Protection Mechanism activities under its Annual Work Programme 2016.[249]

Enhancing access to quality and inclusive education and training for young people with disabilities/special needs, is a priority issue for European cooperation agreed between the Council

[244] Available at: http://www.disability-europe.net/theme/health .

[245] Available at: http://www.disability-europe.net/theme/eu2020.

[246]https://blogg.hioa.no/discit.

[247] https://blogg.hioa.no/discit/publications/.

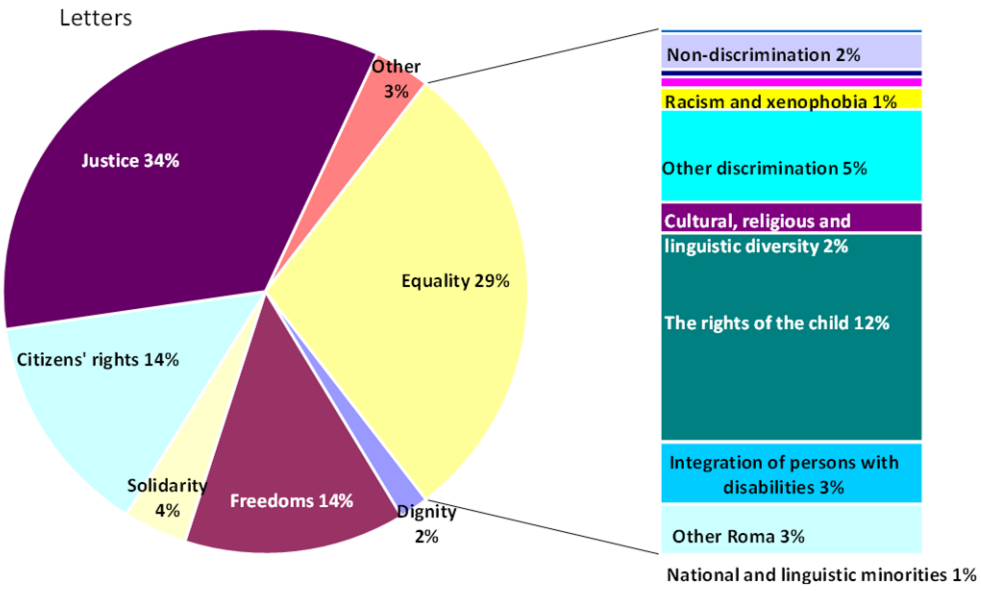
[248] Council of the European Union, Draft Council conclusions on disability-inclusive disaster management – Adoption, 27 February 2015, available at: http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%206450%202015%20INIT

[249] In particular, the Commission foresees to organise in 2016 Civil Protection Mechanism exercises and to co-finance preparedness projects taking into consideration the needs of persons with disabilities.

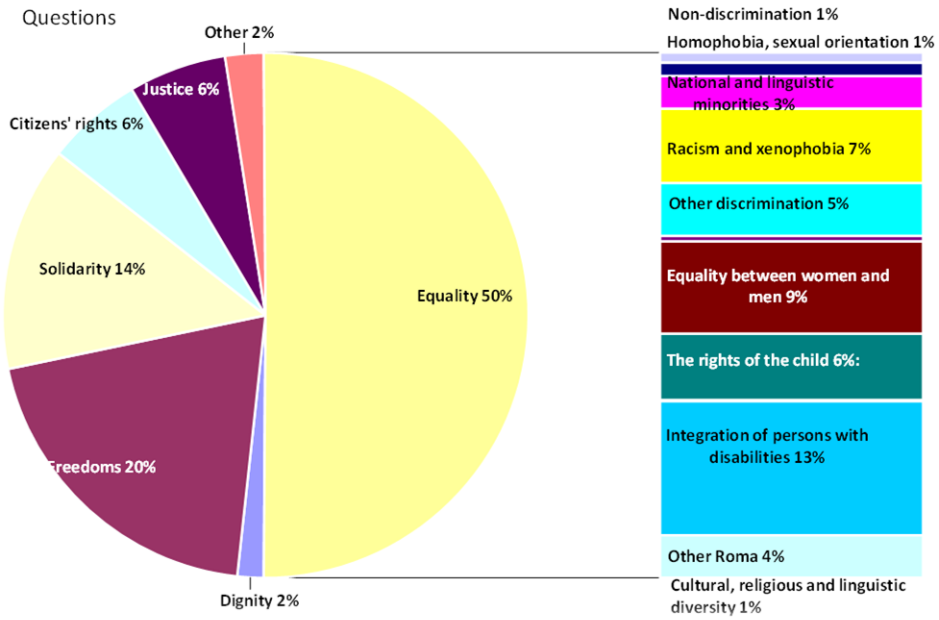
and the Commission in their **2015 Joint Report** on the implementation of the Education and Training 2020 strategic framework.[250]

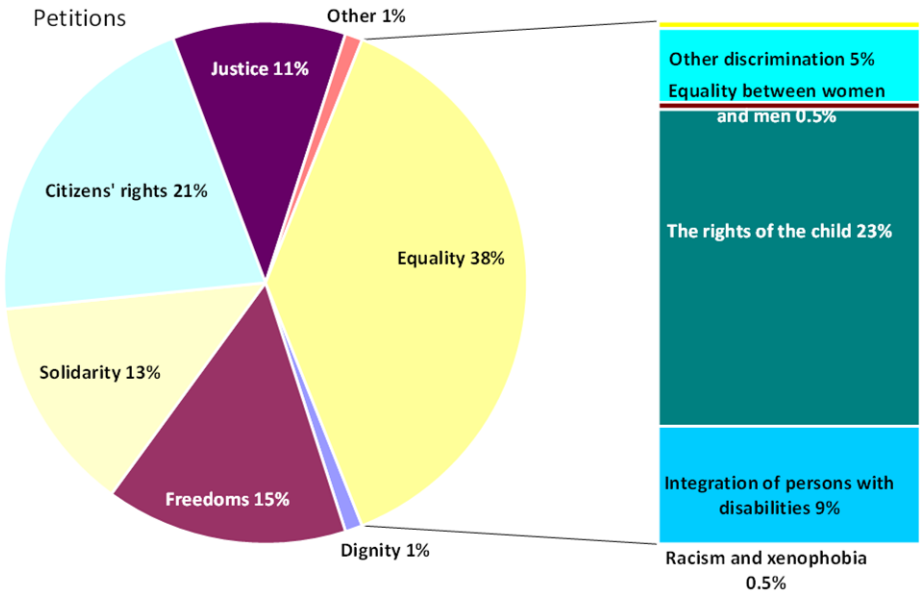
In 2015 the Commission continued its cooperation with (and financial support to) the **European Agency for Special Needs and Inclusive Education**. The Agency works closely with education ministries and supports policy reform with evidence and information about inclusive education across Europe, recommendations for policy and practice and tools to monitor progress.

In 2015, the ***Erasmus+*** programme provided specific provisions for the participation of disabled people in individual learning mobility activities. The programme also supported transnational collaborative projects aiming to improve aspects of inclusive education policy and practice.



[250] Adopted on 23 November 2015. See: http://europa.eu/rapid/press-release_IP-15-5568_en.htm


Questions
Other 2%
Justice 6%
Citizens' rights 6%
Solidarity 14%
Equality 50%
Freedoms 20%
Dignity 2%
Non-discrimination 1%
Homophobia, sexual orientation 1%
National and linguistic minorities 3%
Racism and xenophobia 7%
Other discrimination 5%
Equality between women and men 9%
The rights of the child 6%:
Integration of persons with disabilities 13%
Other Roma 4%
Cultural, religious and linguistic diversity 1%


Petitions
Other 1%
Justice 11%
Citizens' rights 21%
Equality 38%
Solidarity 13%
Freedoms 15%
Dignity 1%
Other discrimination 5%
Equality between women and men 0.5%
The rights of the child 23%
Integration of persons with disabilities 9%
Racism and xenophobia 0.5%

Solidarity

In the field of consumer protection, the new **Directive on package travel and linked travel arrangements** brings the EU package travel legislation into the digital age while the **Directive on payment services in the internal market** opens the EU payment market to new service providers offering thereby more choice for consumers and businesses. Moreover, the **Insurance Distribution Directive** imposes more stringent rules on all providers of insurance products, so that consumers are better informed about the different insurance products available on the market and obtain products that really meet their demands and needs.

The Commission adopted in 2015 two proposals dealing with the **supply of the digital content** and, respectively, the **online and other distance sales of goods**. The proposed rules aim to fully harmonise key contractual rights and provide consumers a very high level of consumer protection when buying online. Finally, the Commission adopted a **proposal for a Regulation on energy efficiency labelling** which is designed to promote consumers' information by helping them distinguish the most efficient products more easily.

In 2015, the **European Ombudsman**, following the opening of its own initiative inquiry, has called on the Commission to be transparent about its meetings with **the tobacco industry** and to publish online all meetings with tobacco lobbyists, or their legal representatives, as well as the minutes of those meetings.

The case ***Fenoll*** concerned the interpretation of the Working Time Directive and the EU Charter of Fundamental Rights on a worker's right to a minimum four weeks' paid annual leave. The CJEU established that a person performing activities within a work rehabilitation centre may qualify as 'worker' within the meaning of the Directive.

Title IV

Solidarity

Article 27 – Workers' right to information and consultation within the undertaking

The Charter in Article 27 provides that workers or their representatives must, at the appropriate levels, be guaranteed information and consultation, in good time, in the cases and under the conditions provided for by EU law and national laws and practices.

Legislation

On 6 October 2015 the EU legislators adopted **Directive 2015/1794**[251] **including seafaring workers within the personal scope of application of a number of labour law Directives** (the European Works Council Directive[252], the insolvency Directive[253], the collective redundancies Directive[254], the transfer of undertakings Directive[255] and the information and consultation Directive[256]). Seafarers could previously be excluded from the scope of application of those Directives. The aim of the Directive is in particular to ensure that seafaring workers enjoy rights to information and consultation (as protected under Article 27 of the Charter) in similar ways as the other workers. The Directive must respect and be implemented in accordance with the relevant rights enshrined in the Charter and cannot lead to a diminution in the protection of seafaring workers. Member States are under an obligation to comply with this Directive by 10 October 2017.

Ruling of the Romanian Constitutional Court

[251] Directive 2015/1794/EU of the European Parliament and of the Council of 6 October 2015 amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC, as regards seafarers, OJ L 263 of 8.10.2015, p. 1.

[252] Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, OJ L 122, 16.5.2009, p. 28.

[253] Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer, OJ L 283, 28.10.2008, p. 36.

[254] Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies, OJ L 225, 12.8.1998, p. 16.

[255] Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.3.2001, p. 16.

[256] Directive 2002/14/EC on the establishing of a general framework for informing and consulting employees in the European Community, OJ L 80, 23.3.2002, p. 29.

The Romanian law on the insolvency procedure allowed exceptionally for dismissals without the need to undergo the collective redundancies procedure, whereby employees would receive only 15 days' notice. The Constitutional Court declared the bypassing of the collective redundancies procedure unconstitutional but accepted the 15 days' notice. The Court referred explicitly to Article 27 of the Charter on workers' right to information and consultation within the undertaking. (Romania, Constitutional Court, case no 64/2015 of 24 February 2015).

Article 28 – Right of collective bargaining and action

Article 28 of the Charter provides that workers and employers, or their respective organisations, have, in accordance with EU law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action. There is no specific EU law regulating the conditions and consequences of the exercise of these rights at national level.[257] Member States remain bound by the provisions of the Charter, including the right to strike, in instances where they implement EU law.

Article 29 – Right of access to placement services

According to Article 29 of the Charter everyone has the right of access to a free placement service.

This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

Article 30 – Protection in the event of unjustified dismissal

According to Article 30 every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices. This Article draws on Article 24 of the revised Social Charter. It is given effect by means of Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.

[257] Article 153(5) of the Treaty on the Functioning of the EU (TFEU) stipulates that it does not apply to the right to strike.

Article 31 – Fair and just working conditions

Article 31 guarantees that every worker has the right to working conditions which respect their health, safety and dignity. Every worker has the right to a limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave. There is a substantial body of EU law in this area concerning, in particular, health and safety at work.

Legislation

Discussions by the EU institutions continued in 2015 on the Commission **proposal for a decision of the European Parliament and of the Council on establishing a European platform to enhance cooperation in the prevention and deterrence of undeclared work**.[258] The Parliament's Employment Committee adopted its report on the proposal in May 2015. The Council and Parliament are currently discussing the proposal. Undeclared work has negative impacts on employment, productivity and working conditions, skills development and lifelong learning. Preventing and deterring undeclared work contributes to better enforcement of EU and national law, including as regards fundamental rights in the areas of employment, labour law, health and safety and coordination of national social security systems. The proposal foresees to improve cooperation at EU level between the Member States in tackling undeclared work more effectively. The objective is to bring together Member State enforcement bodies, such as the labour inspectorates and the social security, tax and migration authorities.

Directive 2014/112/EU[259] **on working time for mobile workers in commercial inland waterway transport**, which was adopted by the Council on 11 December 2014, entered into force in January 2015. The Directive implements the EU social partner agreement concluded on the same issue. It contains specific working time rules for mobile workers working on crafts in the EU Member States in commercial inland waterway transport. This will provide flexibility for the operators while at the same time maintaining the protection of health and safety for workers. The Member States will need to transpose the Directive in their national legislation before 31 December 2016.

Policy

In 2015, the Commission has initiated an **evaluation of the social legislation in the area of road transport**. Article 31 on fair and just working conditions is of particular relevance in the context of the social legislation in this area as the social legislation relates in particular to limits of working time[260] and driving and rest time. The objectives of the social legislation in road transport are: (1)

[258] Proposal for a decision of the European Parliament and of the Council on establishing a European platform to enhance cooperation in the prevention and deterrence of undeclared work, COM(2014) 221 final, 9.4.2014 , available at: http:// eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014PC0221

[259] Council Directive 2014/112/EU of 19 December 2014 implementing the European Agreement concerning certain aspects of the organisation of working time in inland waterway transport, concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF), OJ L 367 of 23.12.2014, p.86.

[260] Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35).

improving working conditions of drivers, (2) enhancing road safety by averting driver's fatigue and (3) ensuring undistorted competition among companies.[261] The Charter, under its Article 52, also sets the conditions under which limitations to fundamental rights (here the right to limitation of maximum working hours and to daily and weekly rest periods) may be allowed. The interactions with the Charter, among other aspects, are currently analysed in the framework of the ex-post evaluation of the social legislation in road transport and will be fully taken into account for the upcoming impact assessment for the enhancement of social rules. Furthermore, the Commission encourages and supports the dialogue between the EU social partners in the road transport sector.

Case law

The case ***Fenoll***[262] concerned the interpretation of the Working Time Directive 2003/88/EC and the EU Charter of Fundamental Rights on a worker's right to a minimum four weeks' paid annual leave, in the context of a person placed in a work rehabilitation centre. The referring court raised questions as concerns the issue of who constitutes a 'worker' for the purposes of Article 7 of Directive 2003/88/EC[263] and of Article 31 of the Charter. It also inquired whether Article 31 of the Charter can be relied on directly in proceedings between individuals. The CJEU stressed that for the purposes of the application of Directive 2003/88, the term 'worker' may not be interpreted according to national law but has its own independent meaning in EU law. It concluded that a person performing activities within a work rehabilitation centre may qualify as 'worker' within the meaning of Article 7 of Directive 2003/88 and Article 31(2) of the Charter. The Court also considered that Article 31(2) of the Charter could not apply to the specific case *rationae temporis*, the case at stake referring to the period between 2003 and 2005 and the Charter having come into force in 2009.

The case Sähköalojen ammattiliitto ry[264] concerned *locus standi*, and in particular the **compatibility with relevant provisions of the Posted Workers Directive**[265]**, read in the light of Article 47 of the Charter**[266]**, of national rules of the Member State of the seat of the undertaking barring a trade union from bringing an action before a court of the host Member State** where workers are posted, in order to recover for the posted workers minimum wage pay claims. The Court stated that under **Article 31(2) of the Charter**, every worker has the right to an annual period of paid leave. Accordingly, the Directive must be interpreted as meaning that the minimum holiday pay which the

[261] Regulation (EC) No 561/2006 of the European parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p.1).

[262] CJEU, judgment of 26 March 2015 in Case C-316/13, *Gérard Fenoll* v *Centre d'aide par le travail «La Jouvene», Association de parents et d'amis de personnes handicapées mentales (APEI) d'Avignon.*

[263] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18.11.2003, p.1.

[264] CJEU judgement of 12 February 2015 in Case C‑396/13, *Sähköalojen ammattiliitto ry v Elektrobudowa Spółka Akcyjna.*

[265] Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ L 018 , 21.01.1997, p. 1.

[266] The case is discussed more in detail under Article 12 on freedom of assembly and association and under Article 47 for the aspects related to the right to an effective remedy and a fair trial.

posted worker must receive for the minimum period of paid annual leave corresponds to the minimum wage to which he is entitled during the reference period.

Article 32 – Prohibition of child labour and protection of young people at work

Article 32 states that the employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations. Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

Article 33 – Family and professional life

Article 33 stipulates that the family shall enjoy legal, economic and social protection. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Policy

The Commission has published in 2015 a Roadmap[267] setting out policy options to address the challenges of work-life balance faced by working families. This represents a new start after the Commission previously confirmed it would withdraw the 2008 draft Maternity Leave Directive, given the lack of progress by the co-legislators and despite the Commission's continuous and intensive efforts to facilitate an agreement. The new initiative aims to allow parents with children or workers with dependent relatives to better balance caring and professional responsibilities, by modernising the current EU legal and policy framework and adapting it to today's labour market. This would also help improve labour market participation of both parents. The Roadmap outlines the Commission's ideas for a fresh approach, setting out a range of policy options to achieve these objectives.

Case law

[267] Available at: http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_just_xxx_maternity_leave.en.pdf

In its judgment of 16 July 2015 in the case C-222/14 *Maïstrellis*[268], the Court referred to Article 33(2) of the Charter to interpret the provisions of the Parental Leave Directive (96/34/EC) and the Gender Equality (Recast) Directive (2006/54/EC).

Observing that the Framework Agreement implemented through the Parental Leave Directive is designed to facilitate the reconciliation of parental and professional responsibilities for working parents, the Court concluded that the right to parental leave was included in Article 33(2) of the Charter which provides that, in order to reconcile family and professional life, everyone has the right, inter alia, to parental leave following the birth or adoption of a child. As a result of the above, each parent is entitled to parental leave, which means that Member States cannot adopt provisions – such as the one at issue in the question referred to the Court - under which a father exercising the profession of civil servant is not entitled to parental leave in a situation where his wife does not work or exercise any profession.

Article 34 – Social security and social assistance

Article 34 of the Charter recognises citizens' entitlement to social security benefits and social services providing protection in cases of maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.

Legislation

In his State of the Union address in the European Parliament on 9 September 2015, Commission President Juncker announced the establishment of a "European Pillar of Social Rights". Taking into account the changing realities of the world of work, it could serve as a compass for the renewed convergence within the euro area. The European pillar of social rights should complement what has already been achieved when it comes to the protection of workers in the EU and social partners should play a central role in this process. This initiative would begin within the euro area, while allowing other EU Member States to join in if they wanted to do so.[269]

On 6 October 2015, the European Commission held an orientation debate on the economic and social dimension of the Single Market and announced a new "**European pillar of social rights**". The Commissioners discussed ways to strengthen Europe's social dimension through an integrated approach, by modernising existing legislation and considering new measures in support of greater convergence over time. [270]

[268] CJEU judgement of 16 July 2015 in Case C-222/14, *Konstantinos Maïstrellis v Ypourgos Dikaiosynis*; see also above under Article 24.

[269]More information available at: http://ec.europa.eu/news/2015/09/20150909_2_en.htm

[270] This initiative should come to fruition during the first Semester of 2016. More information available at: http://europa.eu/rapid/press-release_IP-15-5763_en.htm

Article 35 – Health care

Article 35 of the Charter provides that everyone has the right to access preventive health care and the right to benefit from medical treatment under the conditions established by national law and practices. A high level of human health protection shall be ensured in the definition and implementation of the Union's policies and activities.

Legislation

As regards **child health**, the Regulation (EU) No 609/2013 on food intended for infants and young children, food for special medical purposes and total diet replacement for weight control[271] requires the Commission to lay down specific requirements for infant formula and follow-on formula. There is scientific consensus that breast milk is the preferred food for healthy infants. A draft Commission delegated Regulation supplementing Regulation (EU) No 609/2013 adopted in 2015 as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding[272] lays down specific restrictions on advertising and other marketing techniques for infant formula and specific requirements on information on infant and young child feeding in order to ensure an adequate use of the products in question and not undermine the promotion of breastfeeding. In so doing, the Commission strikes a fair balance between the freedom of expression and information (recognised by Article 11 of the Charter) and the freedom to conduct a business (recognised by Article 16 of the Charter) on one side, and the need to protect the rights of the child (enshrined in Article 24 of the Charter) and to ensure a high level of human health protection (enshrined in Article 35 of the Charter) in its policies, on the other.

Concerning **tobacco packaging**, in the context of the notification procedure under Directive 98/34/EC[273] pursuant to which Member States must inform the Commission of any draft technical regulation before its adoption, on 7 May 2015 the French authorities notified the Commission of a draft Decree on the conditions of neutrality and standardisation for the packaging and paper of

[271] Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009, OJ L 181, 29.6.2013, p. 35.

[272] A Commission delegated regulation supplementing Regulation (EU) No 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding Brussels, C(2015) 6478 final, 25.9.2015, available at:. http://ec.europa.eu/transparency/regdoc/rep/3/2015/EN/3-2015-6478-EN-F1-1.PDF

[273] Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, OJ L 204, 21.7.1998, p. 37.

cigarettes and rolling tobacco ('plain packaging' Decree) – notification 2015/241/F.[274] The Commission, after examination of the proposal and considering that the French draft was legitimate, proportionate and suitable to attain the public health objectives pursued did not deliver any reaction objecting to the envisaged legislation. This position is consistent with the Commission's position in similar notifications in 2014 on standardised tobacco packaging from Ireland (notification 2014/277/IRL) and the United Kingdom (notification 2014/427/UK).

In the area of **nutrition and health claims**, during 2015, the Commission has adopted several implementing Regulations based on the principles laid down in Regulation (EC) No 1924/2006[275] which set up the framework authorising claims that are scientifically substantiated and not ambiguous or misleading for consumers.[276]

Policy

In response to the **high influx of refugees and migrants**, the Commission has amended its annual work plan for 2015 under the **3rd EU Health Programme (2014-2020)**[277] to help address health related issues. A direct grant was given to the International Organisation for Migration to support Member States under particular migratory pressure in their response to health related challenges. This action will contribute to improved capacity of EU Member States under particular migratory pressure to help address health-related issues of arriving migrants, while responding to cross-border health threat, in particular at designated hotspots and reception facilities for refugees and other migrants.

The EU Health Programme (2014-2020) is also funding three other related projects. The project 'The European Refugees - Human Movement and Advisory Network' aims at enhancing the capacity of EU Member States accepting migrants and refugees to address their health needs, safeguard them from risks, and minimize cross-border health risks. This initiative will focus on addressing both the early arrival period and longer-term settlement of refugees in European host countries.

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[274]Available at: http://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2015&num=241

[275] Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, OJ L 404, 30.12.2006, p. 9.

[276] Regulation (EC) No 2015/7 of 6 January 2015 authorising a health claim made on foods, other than those referring to the reduction of disease risk and to children's development and health and amending Regulation (EU) No 432/2012, OJ L 3, 7.1.2015, p.3; Commission Regulation (EU) 2015/8 of 6 January 2015 refusing to authorise certain health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health, OJ L 3, 7.1.2015, p. 6; Commission Regulation (EU) 2015/391 of 9 March 2015 refusing to authorise certain health claims made on foods and referring to children's development and health, OJ L 65, 10.3.2015, p.15; Commission Regulation (EU) 2015/402 of 11 March 2015 refusing to authorise certain health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health, OJ L 67, 12.3.2015, p. 1.

[277] Regulation (EU) No 282/2014 of the European Parliament and of the Council of 11 March 2014 on the establishment of a third Programme for the Union's action in the field of health (2014-2020) and repealing Decision No 1350/2007/EC, OJ L 86, 21.3.2014, p. 1. (see 2015 work plan: http://ec.europa.eu/health/programme/events/adoption_workplan_2015_en.htm).

The project 'Supporting health coordination, assessments, planning, access to health care and capacity building in Member States under particular migratory pressure' aims to support EU Member States under particular migratory pressure in their response to health related challenges. Target countries are Bulgaria, Croatia, Greece, Hungary, Italy, Romania, Slovakia, Slovenia (first arrival and transit countries); Austria, Belgium, Denmark, France, Germany, Malta, Sweden, The Netherlands (traditional destination countries); and Portugal, Poland, Spain (new destination countries). The ultimate beneficiaries are registered and unregistered refugees asylum seekers and other migrants, while direct beneficiaries are the health systems of each EU MS and their health workers.

The project '8 NGOs for migrants/refugees' health needs in 11 countries' supports NGOs from which will support the health authorities of 11 EU Member States in providing adequate and accessible health services to newly arrived migrants with a specific focus on children, unaccompanied minors and pregnant women.

Case law

On 29 April 2015, the Court of Justice issued **a preliminary ruling regarding a French Decree which provided a permanent contraindication to blood donation for men who had sexual relations with other men**.[278] The French law was based on a high prevalence of HIV infections in this group of potential donors in France and the high risk of acquiring severe infectious diseases that can be transmitted by blood.[279]

On 23 December 2015, the Court of Justice delivered a preliminary ruling[280] requested by a UK court on the **compatibility with EU law of national legislation imposing a minimum retail price of alcoholic beverages to tackle health harm** caused by excessive alcohol consumption, in particular the consumption of drinks that are high in alcohol content and sold relatively cheaply. The Court considered under which circumstance the introduction of minimum price for a unit of alcohol could be justified on the grounds of protection of health and life of humans as stated in Article 35 of the TFEU.

The **Advocate General delivered opinions**[281] in 2015 on a number of cases that were referred for a preliminary ruling and which concerned fundamental rights in the context of health protection. Two cases concerned **the implementation of the Tobacco Products Directive 2014/40/EU**.[282] The first case concerned the interpretation and validity, in whole or in part, of the Tobacco Products Directive

[278] CJEU, judgement of 29 April 2015 in Case C-528/13 *Geoffrey Léger v Ministre des affaires sociales et de la santé (Blood donation)*.

[279] The case is discussed above under Article 20 on non-discrimination, section 4. Fight against homophobia.

[280] CJEU, judgement of 8 July 2014 in Case C-333/14, *Scotch Whisky Association and Others v Lord Advocate*.

[281] Opinion of Advocate General Kokott delivered on 23 December 2015 (1), Case C‑547/14, *Philip Morris Brands SARL and Others*; Opinion of Advocate General Kokott delivered on 23 December 2015 (1); Case C‑477/14, Pillbox 38 (UK) Limited.

[282] Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC, OJ L 127, 29.4.2014, p. 1.

2014/40/EU.[283] The referring court posed a number of questions, inter alia, regarding the validity of the legal basis of the Directive (Article 114 TFEU), the proportionality of its provisions and respect of fundamental rights, in particular the ban on non-misleading advertising and the compliance of this prohibition with the freedom of expression (Article 11 of the Charter). The second case concerns the validity of Article 20 of the Tobacco Products Directive 2014/40/UE, which regulates electronic cigarettes and imposes certain restrictions on their marketing.[284] The question referred is whether this Article infringes the rights of manufacturers or retailers under Articles 16 and/or 17 of the Charter. In her Opinions, the Advocate General referred to Article 35 of the Charter and noted that this case (and parallel cases on this subject before the Court) concerns the extent to which the EU objectives regarding a high level of human health protection justifies certain restrictions in the internal market.[285] In particular, the AG found that the legal basis of the Directive - Article 114 TFEU - cannot be called into question solely because the Directive also pursues a high level of health protection which is consistent with the EU objectives: in respect of various restrictions in the Directive, the AG stressed that a high level of health protection justified such restrictions or prohibitions, the protection of human health has considerably greater importance in the value system under EU law than economic interests and that certain economic interests must be secondary to the protection of human health.

Article 36 – Access to services of general economic interest

Article 36 of the Charter provides that the Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

Reference to services of general economic interest (SGEI) is also made in Articles 14 and 106 TFEU. Protocol n. 26 TFEU refers to the broader notion of services of general interest. No definition is provided in the EU Treaties or in secondary EU law. In its Communication on A Quality Framework for Services of General Interest in Europe[286], the Commission stated:

"SGEI are economic activities which deliver outcomes in the overall public good that would not be supplied (or would be supplied under different conditions in terms of quality, safety, affordability, equal treatment or universal access) by the market without public intervention. The PSO [public service obligation] is imposed on the provider by way of an entrustment and on the basis of a general

[283] CJEU, judgement of 1st December 2014 in Case C-547/14, *Philip Morris Brands SARL and Others*.

[284] CJEU, judgement of 23 December 2014 in Case C-477/14, *Pillbox 38(UK) Limited*.

[285] Opinion of Advocate General Kokott delivered on 23 December 2015 (1), Case C‑547/14, *Philip Morris Brands SARL and Others*, paras. 57, 149, 159, 179, 193, 204, 233, 263; Opinion of Advocate General Kokott delivered on 23 December 2015 (1); Case C‑477/14, *Pillbox 38 (UK) Limited;* paras. 57, 67, 130, 190.

[286] Communication from the Commission on A Quality Framework for Services of General Interest in Europe COM (2011) 900, 20.12.2011, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52011DC0900.

interest criterion which ensures that the service is provided under conditions allowing it to fulfil its mission."

Policy

The communication on **A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy**[287] delineates an Energy Union strategy designed to bring greater energy security, sustainability and competitiveness. Its aim is to empower consumers to fully exploit all the opportunities offered by the Single Energy Market, while at the same time giving consumers in vulnerable situations and/or facing energy poverty targeted and effective assistance. Article 36 of the Charter on access to services of general economic interest is relevant in this context in order to contribute to the protection of vulnerable consumers.

Article 37 – Environmental protection

The Charter in Article 37 establishes that a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the union and ensured in accordance with the principle of sustainable development.

Policy

The communication "**A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy**"[288] delineates an Energy Union strategy designed to bring greater energy security, sustainability and competitiveness. From the point of view of the goal of ensuring a high level of environmental protection and the improvement of environmental quality, the most relevant dimension is the one related to the decarbonisation of the economy. The communication lists 15 action points, including the initiatives to be developed as part of the Energy Union strategy.

Application by Member States

One of the aims of Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on the safety of offshore oil and gas operations[289] is to put in place a set of rules in order to help prevent accidents which might cause environmental damages as well as respond promptly and efficiently should one occur, including organizing the full liability of companies for damages caused to protected marine species and natural habitats. The transposition deadline for this Directive expired

[287] Communication from the Commission on A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, COM(2015) 80 final, 25.02.2015, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52015DC0080.

[288] Communication from the Commission on A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy, COM(2015) 80 final, 25.02.2015, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52015DC0080

[289] Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on the safety of offshore oil and gas operations and amending Directive 2004/35/EC, OJ L 178, 28.06.2013, p. 66.

on 19 July 2015 and since then, the Commission has initiated infringements proceedings against Member States which have not yet adopted and/or notified any transposition measures.

Ombudsman inquiries

On 28 April 2015, the European Ombudsman closed an inquiry against the European Commission. The complaint was related to the Commission's public consultation on the list of projects to be considered as potential Projects of Common Interest in energy infrastructure. The complainant argued that the Commission failed to ensure that the public could give their views on the Commission's proposal and that, by restricting the language of its website on the public consultation to English only, the Commission disenfranchised many citizens in countries where the energy infrastructure projects may be built. The European Ombudsman did not find maladministration with regard to consultation procedures, but did find maladministration with regard to the lack of translation of all the consultation documents.[290]

Article 38 – Consumer protection

Article 38 of the Charter provides that Union policies shall ensure a high level of consumer protection, giving guidance to the EU institutions when drafting and applying EU legislation.

Legislation

In line with the objectives established in the Digital Single Market Strategy, the Commission adopted on the 9th of December two proposals dealing with the **supply of the digital content**[291] and, the **online and other distance sales of goods,** respectively.[292] The two proposals are designed to impact positively on a number of rights protected under the Charter. The proposed rules would fully harmonise key contractual rights and provide consumers a very high level of consumer protection when buying online. For digital content (such as, for instance, software, videos, games, movies, etc.), where no specific EU-wide rules for faulty digital content exist, EU consumers would acquire rights in cases of faulty content and have clarity on how to exercise them. For goods - purchased online or by other distance sales means - the different national mandatory rules have led to fragmentation in the online trade and contributed to consumers' mistrust in the digital environment. By acquiring a uniform level of protection across the EU, consumers would be encouraged to confidently engage in the online commerce. They would overall enjoy enhanced rights, such as a longer reversal of the burden of proof in cases of faulty products.

[290] Complaint 240/2014/FOR

[291] Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content, COM(2015) 643 final, 9.12.2015, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015DC0633

[292] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee – Digital contracts for Europe – Unleashing the potential of e-commerce (2015) 633 final, 09.12.2015, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1455042337190&uri=CELEX:52015DC0633

The new **Directive on package travel and linked travel arrangements**[293], replacing the Package Travel Directive from 1990[294], was adopted by the Council on 18 September and by the European Parliament on 27 October 2015. This reform responds to a fundamental transformation of the travel market since 1990: citizens are increasingly purchasing tailor-made combinations of travel services on the internet rather than choosing a ready-made package from a brochure. This reform will bring the EU package travel legislation into the digital age. An additional 120 million consumers who buy customised travel arrangements will be protected by the Directive. Consumers will benefit from increased legal certainty and enhanced protection. Member States have to transpose the new Directive into their national laws by 1 January 2018. The Directive will be fully applicable as of 1 July 2018.

On 1 July 2015, the Commission adopted an **Implementing Regulation on the modalities for the exercise of the functions of the online dispute resolution platform**, under Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes (Regulation on consumer ODR).

The Commission also continued playing an important role in ensuring that national authorities and stakeholders respect consumer safety rules (General Product Safety Directive in particular) and that they cooperate in order to keep unsafe products from reaching and harming consumers. The **Rapid Alert System** for dangerous non-food products collected information exchanges between European countries and the Commission about detected dangerous products and measures taken with respect to risks identified. Since 2004, over 20.000 alerts for dangerous products were circulated in Europe, of which 2.072 in 2015 alone. Particular attention is given to children related products. A quarter of all alerts sent by national authorities concerned safety issues with toys.

On 15 July 2015 the Commission adopted a **proposal for a Regulation on energy efficiency labelling**[295] which promotes consumers' information by helping them distinguish the most efficient products more easily.

On 23 December 2015, **Directive 2015/2366 on payment services in the internal market**[296] was published in the Official Journal. This Directive (known as "PSD2") opens the EU payment market to new service providers offering thereby more choice for consumers or businesses. Citizens will also be better served as a result of the introduction of strict security requirements for the initiation and processing of electronic payments. The Directive also contains new provisions to better protect the

[293] Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, OJ L 326, 11.12.2015, p.1.

[294] Council Directive 90/314/EEC on package travel, package holidays and package tours, OJ L 158, 23.06.1990, p. 1.

[295] Proposal for a Regulation of the European Parliament and of the Council setting a framework for energy efficiency labelling and repealing Directive 2010/30/EU, COM(2015) 341 final, 15.07.2015, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1442564964643&uri=CELEX:52015PC0341

[296] Directive 2015/2366/EU of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, OJ L 337, 23.12.2015, p. 1.

personal data of payers and payees when using payment services, enhanced consumers' rights in numerous areas, e.g. reduced liability for non-authorised payments and an unconditional ("no questions asked") refund right for direct debits in euro, as well as better defined out-of-court redress procedures to enforce their rights under the directive.

Finally, on 24 November 2015, the European Parliament adopted new rules on the distribution of insurance products, which mainly aims to improve the level of consumer protection. The **Insurance Distribution Directive**[297] is a recast of the Insurance Mediation Directive. It imposes more stringent rules on all providers of insurance products, so that consumers are better informed about the different insurance products available on the market and obtain products that really meet their demands and needs.

Policy

On 6 July 2015 the Commission launched a **public consultation** on the current framework regulating Europe's audiovisual media landscape (the so-called Audiovisual Media Services Directive - AVMSD) which has already been mentioned above.[298] The public consultation among others also focused on ensuring a level playing field for audiovisual media services and providing for an optimal level of consumer protection.

On 15 July 2015 the Commission adopted the Communication entitled **"Delivering a New Deal for Energy Consumers"**.[299] The aim is to empower consumers to fully exploit all the opportunities offered by the Single Energy Market, while at the same time giving consumers in vulnerable situations and/or facing energy poverty targeted and effective assistance. These goals are clearly aligned with the objective to ensure a high level of consumer protection.

On 10 December 2015 the Commission adopted a **Green Paper on retail financial services**.[300] The Green Paper invites in particular individuals and consumers of financial services, such as retail banking and current accounts, payment services, credit cards, mortgages and different kinds of insurance (e.g. life, travel, motor, health or home insurance) on how to improve choice, transparency and competition in retail financial services and how to facilitate true cross-border supply of these services. It includes important questions related to the fundamental rights of citizens, e.g. how to ensure that digitalisation of financial services does not result in increased financial exclusion, in particular of those digitally illiterate.

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[297] Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast)Text with EEA relevance, OJ L 26, 2.2.2016, p. 19.

[298] See above Article 11.

[299] Communication from the Commission on Delivering a New Deal for Energy Consumers, COM(2015) 339 final, 15.07.2015, available at https://ec.europa.eu/energy/sites/ener/files/documents/1_EN_ACT_part1_v8.pdf

[300] Communication from the Commission on Green Paper on Retail Financial Services in the Single Market COM (2007) 226 final, 30.04.2007, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0226

On 4 July 2015, the Commission published a **Communication concerning interpretative guidelines on Regulation (EC) 1371/2007 on the rights of passengers travelling by rail**.[301] The guidelines underline that Member States and railway operators should implement the Regulation with the objective of achieving a high level of consumer protection within the Union. The guidelines recall the principle that rail tickets must be offered on a non-discriminatory basis and in particular that passengers cannot be directly or indirectly discriminated on grounds of nationality (see also Article 21 of the Charter). Finally, with regards to persons with disabilities or reduced mobility, the guidelines include recommendations to railway undertakings, station managers, ticket vendors and tour operators concerning non-discrimination, improvement of accessibility, including the provision of information in accessible format, as well as assistance to facilitate the travel of persons with disabilities (see also Article 26 of the Charter).

Case law

In 2015 the CJEU further developed its case-law on procedural guarantees for consumers stemming from EU consumer law, based on the principles of *ex officio* control by national courts, equivalence and effectiveness. While this case-law has been predominantly developed on the basis of the Unfair Contract Terms Directive[302] and has also been applied in relation to the Consumer Credit Directive[303] and in relation to the right of withdrawal for doorstep-selling contracts[304], the CJEU, in its ruling of 4 June 2015 in Case C-497/13 *Faber*, extended it to the Sales and Guarantees Directive.[305] In *Faber* the CJEU inter alia ruled that the **Sales and Guarantees Directive** must be interpreted as meaning that a national court is required to determine whether the purchaser may be classified as a consumer even if the purchaser has not relied on that status. This principle applies as soon as that court has at its disposal the matters of law and of fact that are necessary for that purpose or may have them at its disposal simply by making a request for clarification.[306] The CJEU also decided that Article 5 (3) of the Directive, which provides that, within six months of the delivery, the trader has to prove that a lack of conformity did not exist at the time of delivery, is a provision of equal standing to a national public policy rule and that national courts, therefore, must apply it of their own motion.[307]

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[301] Communication from the Commission on Interpretative Guidelines on Regulation (EC) No 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations, OJ C 220, 4.7.2015, p. 1.

[302] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.04.1993, p. 1.

[303] Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, OJ L 42, 12.2.1987, p. 48, in the meantime replaced by Directive 2008/48/EC.

[304] Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises, OJ L 372 , 31.12.1985 p.31, in the meantime replaced by Directive 2011/83/EC on consumer rights.

[305] Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 07.07.1999, p. 1.

[306] Paragraph 48 and point 1 of the enacting terms.

[307] Point 2 of the enacting terms.

In addition, the CJEU handed down several decisions on the **Unfair Contract Terms Directive** confirming or expanding on its case law, for instance, on the transparency of contract terms in credit contracts[308] as well as on the ex officio control of unfair contract terms by national courts and on procedural guarantees stemming from the effectiveness principle in relation to enforcement proceedings[309], including mortgage enforcement.[310]

Application by Member States

In 2015 the Commission continued several infringement proceedings and EU-pilot investigations regarding the implementation of the requirement, under Article 7 of the **Package Travel Directive**[311] that organisers of packages and/or retailers selling packages have to provide evidence of security for the payments they receive and the repatriation of consumers in the event of their insolvency. This led to legislative changes in two Member States, and changes have been announced by two further Member States.

In 2015, the Commission also worked actively to ensure the full and correct implementation of other consumer protection directives. After ensuring that the **Consumer Rights Directive**[312] started applying in all Member States in 2014, the Commission examined the quality of the transposition in 2015. As a consequence of those checks, the Commission launched a dialogue with 20 Member States raising certain questions and concerns.

Regarding the correctness of the transposition of the **Unfair Commercial Practices Directive**[313], 12 infringement proceedings are still pending. At the same time, many Member States made legislative changes or are still in the process of making such changes so as to bring their legislation into conformity with the Directive. 1 infringement case and 2 cases of dialogue between the Commission and the Member States were closed as a consequence of adequate legislative amendments.

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[308] E. g. CJEU, judgement of 26 February 2015 in Case C-43/13 *Matei,* and CJEU judgement of 9 July 2015 in Case C-348/14 *Bucura*.

[309] E.g. CJEU, Case C-348/14 *Bucura*.

[310] E.g. CJEU judgement of 29 October 2015 in Case C-8/14 *BBVA*, which follows up on the ruling of 14 March 2013 in Case C-415/11 *Aziz*, CJEU judgment of 1 October 2015 in Case C-32/14 *ERSTE Bank Hungary*, and CJEU judgement of 21 January 2015 in Joined Cases C‑482/13, C‑484/13, C‑485/13 and C‑487/13, *Unicaja Banco SA* (C‑482/13), *Caixabank SA v Manuel María Rueda Ledesma and Rosario Mesa Mesa* (C‑484/13), *José Labella Crespo, Rosario Márquez Rodríguez, Rafael Gallardo Salvat and Manuela Márquez Rodríguez* (C‑485/13), and *Alberto Galán Luna and Domingo Galán Luna* (C‑487/13).

[311] Council Directive 90/314/EEC on package travel, package holidays and package tours, OJ L 158, 23.06.1990, p. 1.

[312] Directive 2011/83/EU of the European Parliament and of the Council of 21 May 2013 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, OJ L 304, 22.11.2011, p. 1.

[313] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), OJ L 149, 11.06.2005, p. 1.

As to the correct transposition of the **Timeshare Directive**[314], one infringement and one case of dialogue between the Commission and a Member State were closed, following legislative changes, but three infringement cases and one dialogue case are still pending.

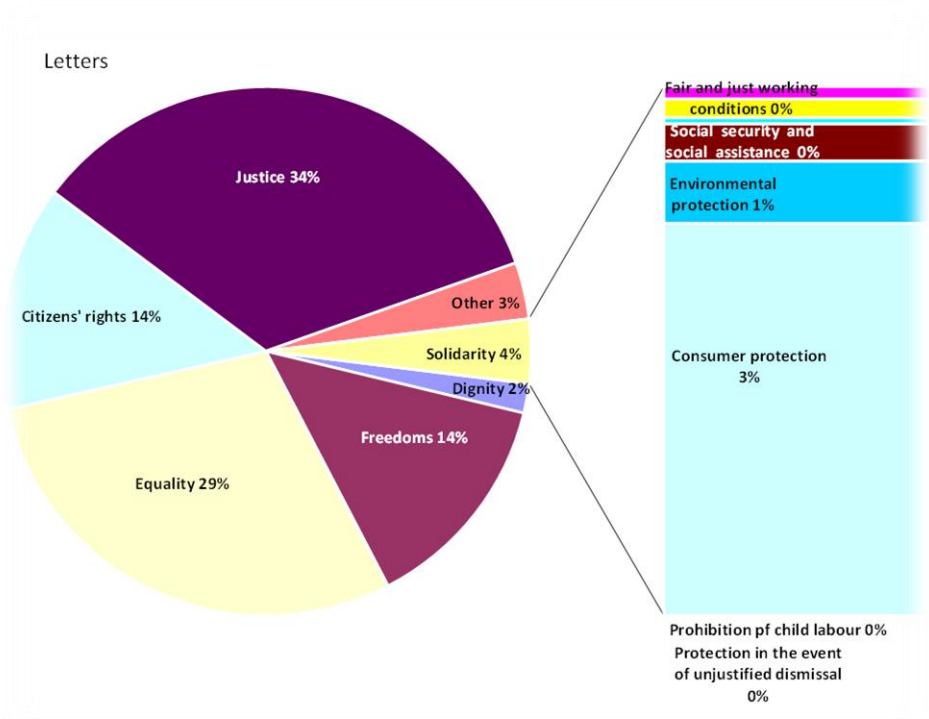
On 9 July 2015, the implementation deadline for **Directive 2013/11/EU on alternative dispute resolution for consumer disputes** (Directive on consumer ADR)[315] expired. The transposition check is ongoing. On 23 September 2015, the Commission issued Letters of Formal Notice for non-communication of implementing measures to 16 Member States.

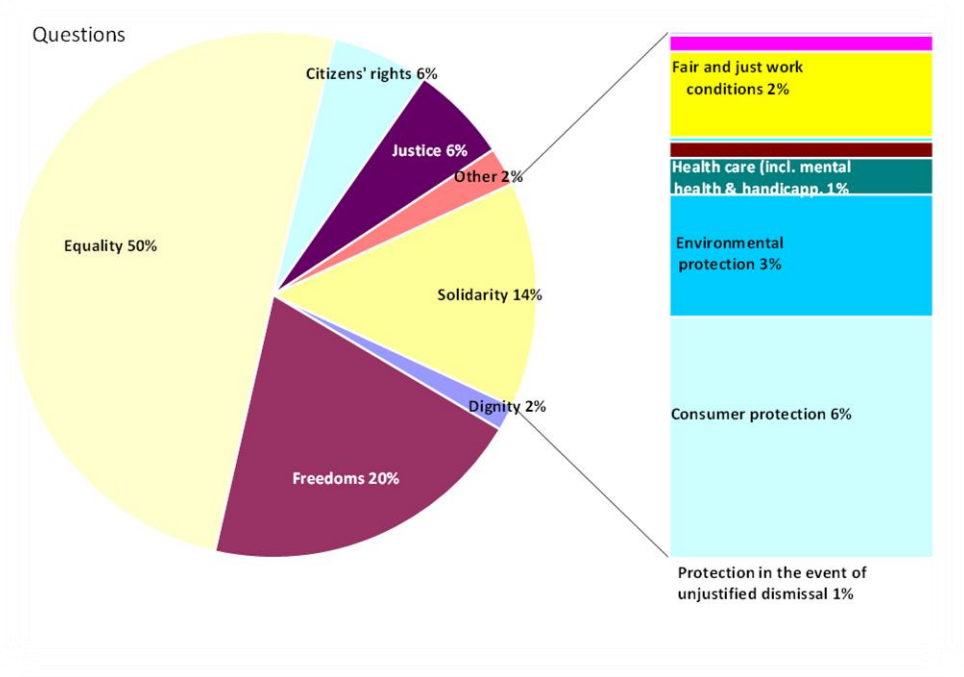
Rulings of Hungarian Courts

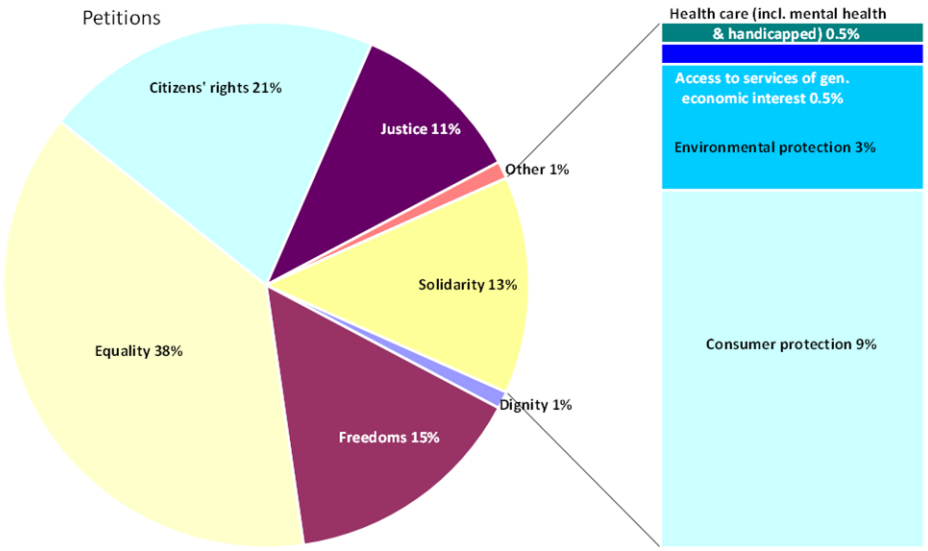
The Budapest-Capital Regional Court denied the applicability of the Charter in a case concerning clauses in foreign currency loan agreements that allowed for unilateral modification despite the fact that the case appeared to fall within the scope of an EU Directive on consumer protection. In a later similar case, the Hungarian Supreme Court held the Charter applicable – but did not identify a violation of its provisions (Hungary, Budapest-Capital Regional Court, case no G.40240/2015/7 of 18 February 2015 and Curia (Supreme Court), case no. Pfv.VI.20.453/2015/4, decision of 14 April 2015)

[314] Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts, OJ L 33/10, 03.02.2009, p. 1.

[315] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), OJ L 165/63, 18.06.2013, p. 1.


Letters
Justice 34%
Citizens' rights 14%
Other 3%
Solidarity 4%
Dignity 2%
Freedoms 14%
Equality 29%
Fair and just working conditions 0%
Social security and social assistance 0%
Environmental protection 1%
Consumer protection 3%
Prohibition pf child labour 0%
Protection in the event of unjustified dismissal 0%


Questions
Citizens' rights 6%
Justice 6%
Other 2%
Equality 50%
Solidarity 14%
Dignity 2%
Freedoms 20%
Fair and just work conditions 2%
Health care (incl. mental health & handicapp. 1%
Environmental protection 3%
Consumer protection 6%
Protection in the event of unjustified dismissal 1%


Petitions
Citizens' rights 21%
Justice 11%
Other 1%
Solidarity 13%
Equality 38%
Freedoms 15%
Dignity 1%
Health care (incl. mental health & handicapped) 0.5%
Access to services of gen. economic interest 0.5%
Environmental protection 3%
Consumer protection 9%

Citizens' rights

The Commission launched, on 14 September 2015, **a public consultation on European Citizenship**, targeting EU citizens, organisations, businesses, national/regional/local authorities and other stakeholders interested in EU citizenship. The objective was to obtain a better insight of EU citizens' experiences in cross-border situations and gather their ideas about what can be done to simplify the exercise of their EU citizenship rights, promote common values and democratic participation.

In case ***Delvigne***, the Court of Justice clarified that Member States , when making provision in their national laws for defining who are entitled to vote in elections to the European Parliament, must comply with the Charter of Fundamental Rights, including Article 39(2) which guarantees EU citizens' right to vote in European elections. The CJEU considered that the ban at stake in the ***Delvigne*** case, which precluded persons convicted of a serious crime from voting in elections to the European Parliament, is proportionate in so far as it takes into account the nature and gravity of the criminal offence committed and the duration of the penalty.

Title V

Citizens' rights

Article 39 – Right to vote and stand as a candidate at elections to the European Parliament

Article 39 of the Charter and Article 20 (2) b of the Treaty on the Functioning of the European Union (TFEU) guarantee the right of every EU citizen to vote in the European elections in whichever Member State they reside. Both articles also provide for the right of EU citizens to vote and to stand as candidates at municipal elections in the Member State in which they reside.

Policy

On 8 May 2015, the Commission published a **report on the 2014 European Parliament elections**[316], assessing the conduct of these elections across Europe, including the measures taken by political parties and Member States to enhance the democratic conduct and European dimension of these elections. The report identified as a key new element of the 2014 elections the direct link that was established between the election results and the choice of the European Commission President. Voters could thus more easily make the link between a vote cast for a national party and the impact of their vote on the political direction of the EU and could make an informed choice between alternative political platforms for Europe. This novelty reinforced the democratic legitimacy of the Commission, and has the potential to enhance public interest and strengthen accountability in the future.

The report also assessed the exercise by citizens of their electoral rights and action taken by Member States and EU institutions in this respect. Amongst others, the report found that, while still low, the number of mobile EU citizens who stood as candidates in their Member State of residence more than doubled, from 81 in 2009 to 170 in 2014.This could be attributed to the new simplified procedures introduced by Directive 2013/1/EU, which ensures that mobile EU citizens can exercise their political rights more effectively.[317]

Case-law

The ***Delvigne*** judgement[318] delivered on 6 October 2015, concerned a French national who was convicted by a final judgment of a serious crime in France. On the basis of the criminal law in force at that time, he was automatically permanently deprived of his civic rights. Mr Delvigne could therefore no longer vote in France, including in elections to the European Parliament.

[316] http://ec.europa.eu/justice/citizen/files/report_european_parliament_elections_2014_en.pdf

[317] Candidates no longer have to provide proof that they have not been deprived of their electoral rights in their home Member State, but only have to make a declaration to that effect, to be verified by the authorities in the host Member State.

[318] CJEU, judgment of 6 October 2015 in Case C-201/13, *Delvigne*.

The Court of Justice was asked whether, taking into account the right of EU citizens to vote in elections to the European Parliament, a Member State may make provision for a general, indefinite and automatic ban on exercising civil and political rights in a case such as that of Mr Delvigne.

The Court of Justice found first of all that Member States , when making provision in their national laws for defining who are entitled to vote in elections to the European Parliament, must comply with the Charter of Fundamental Rights, including Article 39(2) which guarantees EU citizens' right to vote in European elections. Therefore, the deprivation of the right to vote to which Mr Delvigne is subject represents a limitation of the exercise of the right of EU citizens to vote in elections to the European Parliament, as guaranteed in the Charter. The Court noted that limitations may, however, be imposed on the exercise of fundamental rights, in line with Article 52 of the Charter provided, inter alia, that they are proportionate.

In this case, the Court considered that the ban to which Mr Delvigne was subject was proportionate in so far as it took into account the nature and gravity of the criminal offence committed and the duration of the penalty. The ban in question applied, at the time, only to persons convicted of a criminal offence punishable by at least five years' imprisonment. Furthermore, French law allows a person in Mr Delvigne's situation to apply for, and obtain, reinstatement of the civic rights lost. The Court concluded that it is possible to maintain a ban which, by operation of law, precludes persons convicted of a serious crime from voting in elections to the European Parliament.

Application by Member States

The Commission is monitoring the situation to ensure that legislation restricting mobile EU citizens' rights as voters and candidates is removed across the EU.

The Commission has continued its dialogue with a number of Member States on their implementation of European electoral law. Issues under examination include the right of European citizens to found and/or become members of political parties under the same conditions as nationals of their country of residence, the practical arrangements at polling stations for ensuring the secrecy of the ballot and the transposition of Directive 2013/1/EU[319] as regards the five working-day deadline for Member States to respond to requests for information on their own nationals who are standing for election in another Member State.

Ruling of the Czech Constitutional Court

The Czech law on the elections to the European Parliament set a 5% electoral threshold, the legality of which was contested before the Constitutional Court. This Court pointed to the fact that 14 out of the 28 EU Member States have an electoral threshold and concluded that

[319] Council Directive 2013/1/EU of 20 December 2012 amending Directive 93/109/EC as regards certain detailed arrangements for the exercise of the right to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, OJ L 26, 20.12.2012, p.27.

the right to vote and to stand as a candidate at elections to the European Parliament, enshrined in Article 39 of the Charter, does not exclude the use of thresholds. (Czech Republic, Constitutional Court, case no CZ:US:2015:Pl.US.14.14.1 of 19 May 2015)

Article 40 – Right to vote and to stand as a candidate at municipal elections

According to Article 40, every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41 – Right to good administration

According to Article 41 of the Charter, every person has the right to have his or her affairs handled impartially, fairly and within a reasonable timeframe by the Institutions, bodies and agencies of the Union. It also includes the right to be heard and to receive a reply.

Legislation

In the field of customs, the Commission adopted delegated[320] and implementing[321] acts for the **Union's Customs Code** which aims to promote the right to good administration. The right to good administration is promoted through provisions on time limits for the taking of a decision by customs authorities; on the right of the applicant to be heard before a decision which would affect him or her is taken; on the right of appeal against a customs decision and on the recognition of Union-wide validity of customs decisions.

Policy

The phenomenon of staff leaving the EU institutions to take up positions in the private sector, or staff joining the institutions from the private sector, often referred to as the "revolving doors" phenomenon, can raise concerns because of the risk that conflicts of interests may arise, thus undermining citizens' trust in the independence and objectivity of EU institutions. Transparency on "revolving door" cases thus contributes to better guaranteeing the right to good administration, as enshrined in Article 41.

This issue was in the centre of an investigation by the Ombudsman of two complaints in which the Commission was accused of not properly implementing rules on ex-officials taking up employment elsewhere. This inquiry revealed maladministration in the implementation of some aspects of the

[320] Regulation 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code, OJ L 343, 28.7.2015, p.1

[321] Regulation 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation 952/2013 of the European Parliament and of the Council, OJ L 343, 24.11.2015, p.558.

Commission's approach to the "revolving doors" phenomenon. The Ombudsman therefore made specific recommendations to the Commission[322] aimed at strengthening its review processes for so-called "revolving door" cases.

In response, the Commission published[323] on 4 December 2015 the names of certain senior officials who leave the European Commission for new jobs, including positions in the private sector. It will also publish the details of previous duties of the senior officials concerned, their new role outside the Commission, and its own assessment of possible conflicts of interest. The move, outlined in the Commission's reply[324] to the Ombudsman, is in line with recommendations[325] the Ombudsman issued in September 2014, and follows the new EU Staff Regulations in place since January 2014.These specify that all officials leaving EU employment must inform their institution of any proposed new employment during the two years after leaving their institution..

Administrative review by the Commission

The Commission assessed[326] the compliance of the **procedures at the European Food Safety Authority** (EFSA) with the Charter, Article 41 and Article 20 (right to equality before law).[327]

In 2014 an undertaking had submitted to the Commission a request for administrative review of the scientific opinion on the safety and efficacy of a certain feed additive. The applicant alleged that its procedural right to be heard, the right to equal treatment and the right to protection of legitimate expectations set out in Articles 20 and 41 of the Charter were infringed in the proceedings before the EFSA. The Commission found no violation of these rights as it was established that the applicant was always kept informed of the status of the assessment throughout the evaluation process, it had been given the opportunity to be heard on several occasions, to comment on the findings in the EFSA's

[322] Ombudsman press release no. 18/2014, 23.9.2014, available at: http://www.ombudsman.europa.eu/en/press/release.faces/en/56332/html.bookmark

[323] Communication of the Commission on the Publication of Information Concerning Occupational Activities of Senior Officials after Leaving the Service (Article 16 (3) and (4) of the Staff Regulations), COM(2015) 8473, 4.12.2015, available at: http://ec.europa.eu/civil_service/docs/c_2015_8473_f1_communication_from_commission_to_inst_en_v4_p1_834004.pdf

[324] Follow-up of the Commission on the European Ombudsman's draft recommendation - Two joined complaints by Corporate Europe Observatory, Greenpeace EU Unit, LobbyControl and Spinwatch (ref. 2077/2012/TN) and Friends of the Earth Europe (ref. 1853/2013/TN), available at: http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/61641/html.bookmark

[325] Draft recommendation of the European Ombudsman in the inquiry based on complaints 2077/2012/TN and 1853/2013/TN against the European Commission available at: http://www.ombudsman.europa.eu/en/cases/draftrecommendation.faces/en/56216/html.bookmark

[326] Commission Decision C(2015) 3409 final of 20 May 2015 on the administrative review of the scientific opinion on a certain feed additive, adopted by the European Food Safety Authority (EFSA) on 1 July 2014, not yet published.

[327] See above Article 20

opinion and to present and explain its scientific arguments directly to experts involved in preparing the opinion.

Case law

The same applicant as in the above decision sought the **annulment of the Implementing Regulation suspending the authorisations of the feed additive**[328] concerned and alleged a violation of the right to be heard, the right to fair proceedings and principle of proportionality (i.e. lack of an opportunity to sufficiently present observations) – principles concerned by Article 41 of the Charter. In its judgment of 21 May 2015[329], the General Court established that there was no violation of those principles and that the applicant had been given an opportunity to present its arguments and observations relevant to the assessment of the feed additive to the EFSA and the Commission.

In another case[330] brought before the General Court, certain food business operators contested the proceedings leading to the adoption of Commission Regulation (EU) No 432/2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health.[331] They alleged that the Commission failed to adequately inform and consult the various interested parties when preparing the Regulation. The Court confirmed that the right to be heard in an administrative procedure affecting a specific person cannot be transposed to the context of a legislative process leading to the adoption of general laws.

In the field of competition law, the General Court considered whether the case law of the European Courts concerning the required content of the statement of objections of the Commission (in particular regarding the legal elements which are relevant for the calculation of the fine) is superseded by Articles 41 and 48 of the Charter regarding the right to be heard and the rights of defence. According to the General Court's judgement in ***Orange Polska***[332] the principles set out in the case law were not affected by the entry into force of the Lisbon Treaty incorporating the Charter. This case law forms part of the content of the right to a fair trial, which derives inter alia from Article 6 ECHR and is recognised at EU level as a general principle of EU law. The applicant had initially also alleged a breach of Article 47 of the Charter but the General Court considered that claim to be withdrawn as the applicant had declined to answer a question by the Court as to the appropriate conclusions to be drawn from the judgments of the Court of Justice in *Chalkor*[333] and *Schindler*[334]

[328] Commission Implementing Regulation (EU) No 288/2013 of 25 March 2013 concerning the suspension of the authorisations of the preparation of Bacillus cereus var. toyoi (NCIMB 40112/CNCM I-1012) as provided for by Regulations (EC) No 256/2002, (EC) No 1453/2004, (EC) No 255/2005, (EC) No 1200/2005, (EC) No 166/2008 and (EC) No 378/2009, OJ L 86 25.03.2013, p.15

[329] CJEU, judgment of 21 May 2015 in T-201/13, *Rubinum SA v Commission.*

[330] CJEU, judgement of 12 June 2015 in Case T- 296/12 *Health Food Manufacturers' Association and Others v Commission.*

[331] Commission Regulation (EU) No 432/2012 of 16 May 2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health, OJ L 136, 25.5.2012, p. 1.

[332]GC, judgement of the 17 December 2015 in Case T-486/11, *Orange Polska.*

[333] CJEU, judgement of 8 December 2011 in Case C-386/10 P, *Chalkor v Commission.*

according to which the EU's antitrust enforcement system is fully compatible with that provision of the Charter. Furthermore, in the appeal case of ***Deutsche Bahn***[335] the CJEU reviewed investigative powers, in particular inspection decisions, of the Commission in the context of enforcing EU Competition law. Here while generally holding that inspection decisions as such did not constitute a violation of the right under Article 7 of the Charter (inviolability of the home, or rather: business premises in the concrete case), the Court annulled two inspection decisions on the ground that they had breached the complainant's rights of defence. The Court held that during the first inspection the Commission had collected evidence that had not been strictly covered by the first inspection decision and which then had led to two subsequent inspection decisions in a different matter. The Court held that the rights of defence would be seriously endangered if the Commission were able to rely on evidence against undertakings which was obtained during an investigation but was not related to the subject-matter or purpose thereof. While the Commission was generally not barred from initiating an inquiry in order to verify or supplement information which it happened to obtain during a previous investigation, the concrete case differed in so far as the Commission had already had the relevant information before the first inspection.

Moreover, in ***Ellinikos Chrysos***[336] the General Court clarified that the recipient of State aid has no special role in the procedure for reviewing such aid as it is not brought against it. The recipient in essence only has a role as an information source for the Commission. Consequently, the General Court found no breach of the principle of good administration laid down in Article 41 of the Charter due to the failure of the Commission to disclose the identity of the complainant, as the Commission is under no duty to reveal the complainant's identity or any source of information to interested parties.

Ruling of an Italian Regional Administrative Tribunal

In Italy, the Lazio Regional Administrative Tribunal, ruling over a complaint filed by a lawyer who was not admitted to the oral test of the bar examinations, found that the decision made by the Ministry of Justice did not comply with the minimum conditions of transparency, interpreted in the light of Article 41 of the Charter, as regards the obligation to state reasons as an aspect of the right to good administration. (Italy, Lazia Regional Administrative Tribunal, case no. 201509411 of 14 July 2015)

[334] CJEU, judgement of 18 July 2013 in Case C-501/11 P, *Schindler Holding and Others v Commission.*

[335] CJEU judgement of 18 June 2015 in Case C-583/13 P, *Deutsche Bahn and Others v Commission*, see also above under Article 7.

[336] GC, judgement of 9 December 2015 in Cases T-233/11 and T-262/11, *Hellenic Republic v European Commission.*

Article 42 – Right of access to documents

The Charter, in Article 42, guarantees that any EU citizen and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the EU institutions, bodies, offices and agencies. This right is subject to certain exceptions.[337] In particular, the institutions refuse access where disclosure would undermine the protection of the public interest.

In 2015, the European Commission registered 6752 initial requests for access to documents, which represents an increase by more than 8% in terms of number of applications. Full or partial access was granted at the initial stage in more than 84% of the cases. In 2015, the Commission received 284 confirmatory applications, representing a slight decrease compared to the 300 applications received in 2014. Such applications are reassessed by case handlers acting independently from the ones that handled the initial application. This review has led to wider access being granted in more than 41% of the cases.

Policy

In 2015, the European Commission sought to increase transparency towards its citizens by improving the traceability of documents and consequently the access by the public to documents held by the institution. To this effect, it improved its document management in order to ensure that all documents held by the Commission, including e-mails, are properly registered, filed and can easily be retrieved.

The decision the new Commission took in November 2014[338] to publish information about interest representatives who meet its political leaders and senior officials led to an easier access to Commission documents in 2015, as this publication triggered requests by the public for access to minutes of meetings or other related documents.

In 2015, the Commission also started the implementation of the PublicAccess.eu pilot project. The main objective of the pilot project is to enable easier online access to a wider range of unclassified documents held by EU institutions thereby enhancing transparency. The work in 2015 concentrated on the implementation of three specific project strands:

- **Enriching EUR-Lex with new categories of documents**. In 2015 a number of new document types, most of which concern the preparatory stage of the decision-making process within

[337] Under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

[338] Commission decisions C(2014) 9051 and C(2014) 9048 of 25 November 2014 on the publication of information on meetings held between Members and Directors-General of the Commission and organisations or self-employed individuals, available at http://ec.europa.eu/news/2014/docs/c_2014_9051_en.pdf and http://ec.europa.eu/news/2014/docs/c_2014_9048_en.pdf.

the Commission, were identified in view of being included in EUR-Lex and shown in connection with the relevant legal texts.[339]

- The **Project** will bring together the complete legislative cycle together with a range of related non-legislative documents for a few selected legal acts. It provides an environment for testing experimental ideas for displaying legal information, while exploring at the same time the potential of gathering all publicly available information concerning specific legal acts in one place for easy access.[340]
- The **study on ensuring integrated access to publicly available documents from EU institutions, agencies and bodies** aims to provide a wider insight into how to bring together different types of documents from different EU institutions, agencies and bodies, display them in a single place in view of ensuring easy and seamless access, and make them searchable, for the benefit of various stakeholders interested in EU documents and citizens at large.[341]

Case law

A number of interesting rulings were issued in 2015 on the right of access to documents.

In *Unión de Almacenistas de Hierros de España*[342] the Court ruled on the right to access to documents as regards **access to information exchanged between the Commission and a national competition authority in the context of proceedings related to an infringement of competition rules**. In its ruling, the General Court took the view that such documents are not, in principle, accessible to the public, since a general presumption does exist according to which the disclosure of those documents could in fact undermine the protection of the commercial interests of the undertakings concerned as well as the protection of the purpose of investigations. The Court also clarified that the presumption applies independently of the question whether the request for access concerns an investigation procedure that is already closed or one that is pending and that nothing in the regulation states that the protection of the confidentiality of the information exchanged must end after the final closure of the investigation that has allowed this information to be gathered.

Finally, *ClientEarth v Commission*[343] concerned the **right of access to impact assessment reports**. The applicant, a non-profit organisation whose aim is the protection of the environment, applied to the Commission for access to two impact assessments connected with EU environmental policy. The Commission refused to grant access, stating *inter alia* that, in view of the fact that the impact assessments were intended to help with the preparation of legislative initiatives in respect of environmental matters, the disclosure of those documents could seriously undermine its decision-making processes. The **General Court** recognised in this case that, in the context of the preparation and development of policy proposals (and, where appropriate, proposals for legislative acts), the

[339] The transmission of the first documents will start in 2016.
[340] It will go live in April 2016.
[341] The study will be delivered in April 2016.
[342]GC, judgement of 12 May 2015 in Case T‑623/13, *Unión de Almacenistas de Hierros de España v European Commission.*

[343] GC, judgment of 13 September 2013 in Case T-111/11, *ClientEarth v European Commission*.

Commission may rely on grounds of a general nature relating to the need to preserve its 'thinking space', room for manoeuvre, and independence, the need to preserve the atmosphere of trust during discussions, and the risk of external pressures liable to affect the conduct of the ongoing discussions and negotiations. Therefore, it concluded that the Commission can rely in such cases, without carrying out a specific and individual examination of each of the documents connected with an impact assessment, on a **general presumption of overriding public interest** for as long as it has not made a decision on the policy proposal.[344]

Article 43 – European Ombudsman

The Charter provides that any EU citizen and any natural or legal person residing or having its registered office in a Member State, has the right to refer to the European Ombudsman on cases of maladministration in the activities of the EU institutions, bodies, offices and agencies, with the exception of the CJEU acting in its judicial role.

In 2015, the European Ombudsman was able to help 17 033 citizens. This includes individuals who complained directly to the European Ombudsman (2 007 complaints), those who received a reply to their request for information (1060), and those who obtained advice through the interactive guide on the European Ombudsman's website (13 966).

About 512 complaints fell within the competence of a member of the European Network of Ombudsmen of which 470 fell within the competence of a national / regional ombudsman or similar body and 42 were referred to the EP's Committee on Petitions.

707 complaints fell within the European Ombudsman's mandate.

A prominent example of the Ombudsman's work is the investigation launched at the end of 2014[345] concerning the means through which **Frontex ensures respect for fundamental rights in joint return operations (JRO)**. A number of detailed questions were asked and the Ombudsman carried out an inspection of Frontex JRO files at its headquarters in Warsaw. As many national ombudsmen have a role to play in JROs, either as monitoring bodies or dealing with complaints, the European Ombudsman asked members of the European Network of Ombudsmen for their input.

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[344] The judgement was subject to appeal which led to the CJEU judgement of 16 July 2015 in Case C-612/13 P, *ClientEarth v European Commission*. In its ruling, the CJEU dismissed the appeal except for the refusal, on the basis of a general presumption, of full access to certain studies relating to the compatibility of the legislation of various Member States with EU environmental law which, on the date when that decision was adopted, had not led the Commission to send a letter of formal notice to the Member State concerned, under the first paragraph of Article 258 TFEU, and had not therefore been placed in a file pertaining to the pre-litigation stage of infringement proceedings.

[345] Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2014/MHZ concerning the means through which Frontex ensures respect for fundamental rights in joint return operations (JRO), available at http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/58135/html.bookmark .

In its opinion, Frontex explained that each participating Member State is responsible for its own contingent of returnees in a JRO. It pointed out that, to date, only three critical situations have been reported, including in relation to the use of force. Frontex also highlighted the practical problems resulting from diverging national regulations on the use of restraint.

After receiving Frontex's comments, the Ombudsman launched a targeted consultation of public institutions and civil society organisations active in protecting migrants' rights.

Finally, in May 2015 the Ombudsman adopted a decision[346] and closed its investigation. The Ombudsman commended Frontex' work to date. However, she called on the agency to ensure that families with children and pregnant women are seated separately from other returnees. Frontex should also promote common rules on the use of restraint, publish more information on JROs, including monitors' reports, and require the Member States to improve complaints procedures. The Ombudsman expressed concern with the refusal of Frontex to establish its own complaints mechanism.

The Ombudsman suggested several amendments to Frontex's JRO Code of Conduct, including provisions on the use of coercive measures, timely medical examinations of returnees, and human rights training for escorts, with a focus on people with disabilities, women and children.

Following the Ombudsman's decision, Frontex replied[347] to its recommendations. This was taken into account when **a Regulation on the European Border and Coast Guard** was proposed.[348] This proposal establishes a European Border and Coast Guard bringing together the European Border and Coast Guard Agency built from Frontex and the national border management authorities of the Member States, including coastguards to the extent that they carry out border control tasks. The European Border and Coast Guard would ensure the implementation of the European integrated border management in line with the principle of shared responsibility. Given the stronger role and enhanced operational tasks of the Agency, the proposal aims at establishing a number of fundamental rights safeguards that aim to ensure compliance with specific Articles of the Charter.[349]

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[346] Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2014/MHZ concerning the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), available at: http://www.ombudsman.europa.eu//cases/decision.faces/en/59740/html.bookmark

[347] Decision of the European Ombudsman closing her own-initiative inquiry OI/9/2014/MHZ and the conclusions, (including related documents) available at: http://www.ombudsman.europa.eu//cases/correspondence.faces/en/61415/html.bookmark

[348] Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC, COM (2015) 671, 15.12.2015, available at: http://eur-lex.europa.eu/procedure/EN/2015_310

[349] See above Articles 1, 4, 18 and 19.

Article 44 – Right to petition

All EU citizens, as well as any natural or legal person residing or having its registered office in a Member State, have the right to petition the European Parliament on matters which come within the Union's fields of activity and which affect the petitioner directly.

The petition may present an individual request, a complaint or observation concerning the application of EU law or an appeal to the European Parliament to adopt a position on a specific matter. Such petitions give the European Parliament the opportunity of calling attention to infringements of citizens' rights. A petition's portal was created to help citizens to submit their petitions easily: http://www.petiport.europarl.europa.eu/petitions/en/main.

As already mentioned above in the introduction, the European Commission, in 2015, received 916 petitions, 187 of which concerned fundamental rights.

Citizens' initiatives

Another instrument in the hands of EU citizens is the possibility of registering a **citizens' initiative**. A European citizens' initiative is an invitation to the European Commission to propose legislation on matters where the EU has competence to legislate. A citizens' initiative has to be backed by at least one million EU citizens, coming from at least 7 out of the 28 member states. A minimum number of signatories is required in each of those 7 member states.

In 2015, six citizens' initiatives were registered: "On the wire", "Fair transport Europe – equal treatment for all transport workers", "Stop plastic in the sea", "Vi vill att WHO:s rekommendationer efterföljs.Cannabis ska bli avkriminaliserat med reglering", "Wake up Europe! Taking action to safeguard the European democratic project", "Mum, Dad & Kids - European Citizens" and "European Asylum Initiative"

Finally, it is worth mentioning that the General Court, in case *Anagnostakis v Commission*[350], **confirmed that the European citizens' initiative seeking to allow cancellation of the onerous public debt of countries in a state of necessity such as Greece could not be registered** since the subject matter of such an initiative did not have any basis in the Treaties.

Article 45 – Freedom of movement and of residence

The Charter guarantees the right of every EU citizen to move and reside freely, whilst respecting certain conditions, within the territory of the Member States. This fundamental right is also included in the Treaty on the Functioning of the EU.

Case law

[350]GC, judgment of 30 September 2015 in Case T-450/12, *Alexios Anagnostakis v European Commission.*

In ***McCarthy***[351], the Court found that where third-country nationals hold a 'residence card of a family member of a Union citizen', the Member States cannot require them to first obtain a visa before entering their territory. Even if Member States are faced with a high number of cases of abuse of rights or fraud, the adoption of measures of "general prevention" are not justified without a specific assessment of the conduct of the person concerned. The family members of EU citizens who fulfil the conditions laid down in the Free Movement Directive[352] enjoy the rights granted by this Directive without constraints due to the mere fact that they belong to a particular group of persons (third-country nationals). Measures that automatically impose additional conditions disregard the very substance of the primary and individual right of EU citizens to move and reside freely within the territory of the Member States.

Application by Member States

The European Commission's action to promote the freedom of movement resulted in several changes to national legislation. In Sweden, holders of Swedish identity cards were prevented from travelling to an EU country outside the Schengen area on the basis of this document (to leave the country they needed a passport according to the law). Following the Commission's intervention, a new law was adopted which entered into force on 1 July 2015 and enables Swedish citizens to leave the country with only their national ID card.

The Commission further continued its dialogue with a number of Member States on their transposition and implementation of the EU acquis on free movement of EU citizens and their family members, including substantial and procedural safeguards (Articles 21 and 45 of the Charter). As a result of infringement proceedings against one Member State and a dialogue with another Member State, these two Member States respectively adopted legislative amendments aiming to address the Commission's concerns in November and December 2015, respectively.

Article 46 – Diplomatic and consular protection

Article 46 of the Charter guarantees the right of unrepresented EU citizens to seek diplomatic or consular protection from embassies or consulates of other Member States in third countries under the same conditions as nationals. EU citizens must be able to rely effectively on this right when travelling abroad.

Legislation

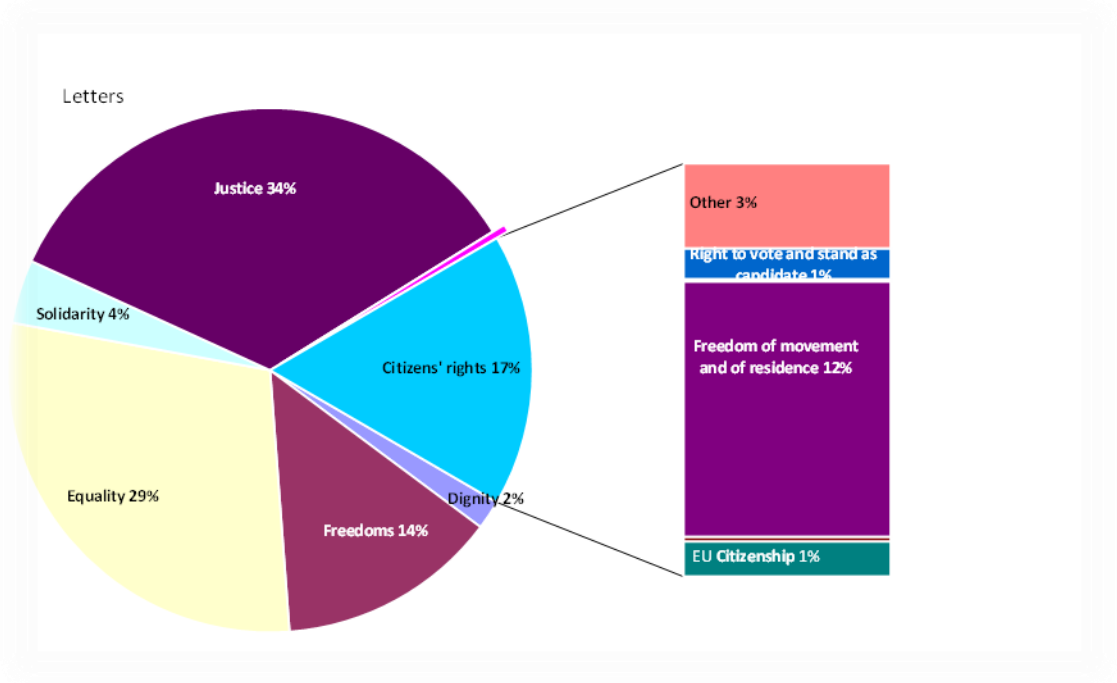
The Commission had adopted on 14 December 2011 a proposal for a Directive on consular protection for citizens of the Union abroad in a bid to clarify and streamline the implementation of EU citizens' right to receive equal protection.

[351] CJEU, judgment of 18 December 2014 in Case C-202/13, *McCarthy*.

[352] Council Directive 2004/83/EU on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304, 29.04.2004, p. 20.

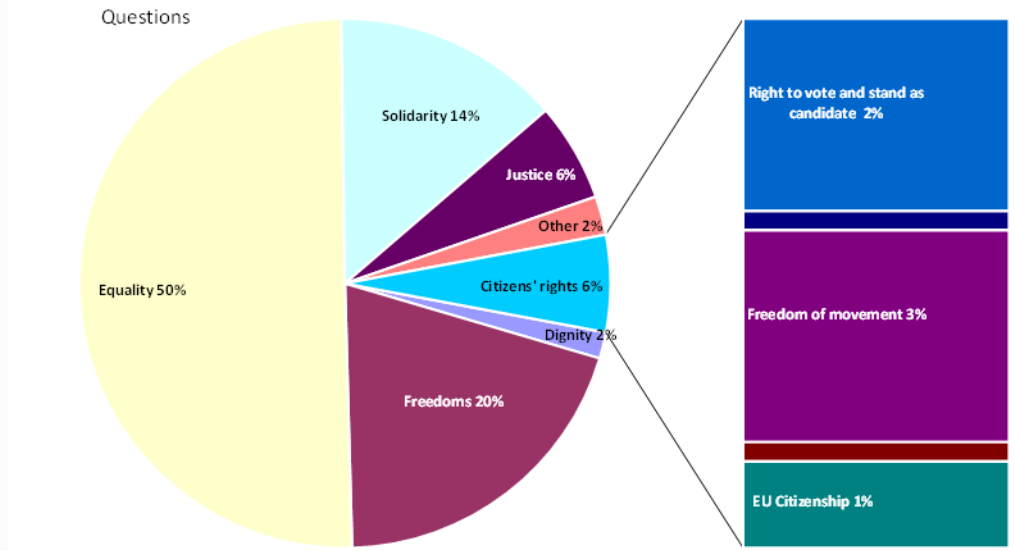
On this basis, the Council adopted, on 20 April 2015, the **Directive on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries.**[353] The aim of the Directive is to further facilitate cooperation and coordination between consular authorities and to strengthen citizens' right to consular protection. The Directive clarifies when and how EU citizens in distress in a country outside the EU have the right to receive assistance from other EU countries' embassies and consulates.[354]

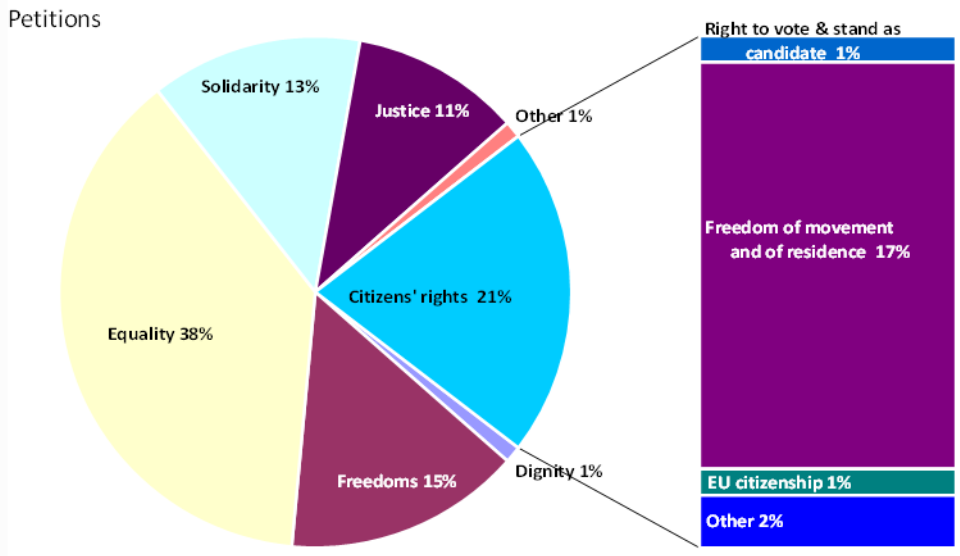
In addition, in order to give full effect to the right of unrepresented EU citizens to a non-discriminatory consular protection, consular protection clauses are currently being negotiated in a number of in bilateral agreements. By means of these clauses, third countries expressly authorise the represented Member State(s) to provide consular protection to any unrepresented EU citizen in their territory.



[353] Council Directive 2015/637/EU on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC, OJ L 106, 20.04.2015, p. 1.

[354] See above Article 7.


Questions
Solidarity 14%
Justice 6%
Other 2%
Citizens' rights 6%
Dignity 2%
Freedoms 20%
Equality 50%
Right to vote and stand as candidate 2%
Freedom of movement 3%
EU Citizenship 1%


Petitions
Solidarity 13%
Justice 11%
Other 1%
Citizens' rights 21%
Dignity 1%
Freedoms 15%
Equality 38%
Right to vote & stand as candidate 1%
Freedom of movement and of residence 17%
EU citizenship 1%
Other 2%

Title VI

Justice

The adopted **recast Regulation on insolvency proceedings** improves the situation with respect to creditors' rights to an effective remedy and fair trial. It ensures, in particular, that creditors in another Member State have the possibility of judicial review of the decision opening insolvency proceedings.

In 2015, agreement has been reached between European Parliament and Council on a new **Directive on the presumption of innocence and the right to be present at trial**, and on a **Directive on special safeguards for children in criminal proceedings**. The negotiations on the proposed **Directive on provisional legal aid and legal aid in European Arrest Warrant proceedings** are on-going.

An **infringement procedure against Hungary** was launched by the European Commission in 2015 concerning the compliance of Hungarian legislation adopted as a response to the migration crisis. A number of issues raised concern the compatibility of the new Hungarian rules on asylum procedures with provisions on the right to an effective remedy contained in the recast Asylum Procedures Directive read in light of the requirements stemming from Article 47 of the Charter**.**

Article 47 – Right to an effective remedy and to a fair trial

Article 47 of the Charter provides that when EU rules give a right to a person, he or she has the right to an effective remedy before a tribunal in case this right is violated. This protection is called **right to an effective remedy**, because it provides to individuals a legal solution decided by a tribunal when an authority applied EU law in an incorrect way. The right to an effective remedy guarantees judicial protection against violations of any EU rule which grants rights to people. It therefore plays a key role in ensuring the effectiveness of all EU provisions, ranging from social policy, to asylum legislation, competition, agriculture, etc.

Closely related to the right to an effective remedy is the provision, also guaranteed by Article 47, that **legal aid** shall be made available to those who lack sufficient resources, in so far as such aid is necessary to ensure effective access to justice. This means that the right to effective access to justice cannot be hampered by the fact that a person cannot afford to take a lawyer.

Article 47 of the Charter does not only provide a right to an effective remedy, but it also stipulates that, in all judicial proceedings which relate to the interpretation or the validity of EU rules, everyone shall have the right to a **fair trial**. This right encompasses the right to a fair and public hearing, the right to have one's case adjudicated within a reasonable time, the principles of independence and impartiality of the tribunal as well as the right to be advised, defended and represented.

Legislation

A number of developments can be reported on legislative measures or proposals linked to the implementation of the right to an effective remedy and to a fair trial in the field of **EU civil justice policies**.

The **recast Regulation on insolvency proceedings** was adopted on 20 May 2015.[355] As stated in its preamble, the Regulation seeks to promote, inter alia, the application of Article 47 of the Charter, by improving the situation with respect to creditors' rights to an effective remedy and fair trial.[356] It ensures, in particular, that creditors in another Member State have the possibility of judicial review of the decision opening insolvency proceedings.

In addition, the European Parliament and the Council adopted, on the basis of the Commission's **proposal, Regulation (EU) 2015/2421 amending the Regulation on European Small Claims Procedure and the Regulation on the European Order for Payment Procedure**.[357] The Regulation extends the scope of the European Small Claims Procedure on the claims of a value up to EUR 5.000, puts electronic service of documents on an equal footing with a postal service and enhances use of distance means of communication for the purpose of conducting the hearings and taking of

[355] Regulation 2015/848/EU of the European Parliament and of the Council on insolvency proceedings (recast), OJ L 141, 20.05.2015, p.19.

[356] See above Articles 8 and 17.

[357] Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure has been published in the Official Journal on 24 December 2015, OJ L 341 of 24.12.2015, p. 1.

evidence. These and other changes that will make a European Small Claims Procedure faster and cheaper tool for enforcement of consumer rights and for a cross-border debt recovery for Small and Medium Enterprises will enter into application on 14 July 2017.

In the field of consumers' and users' rights in the digital environment, the Commission adopted on 9 December 2015, in line with the objectives established in the Digital Single Market Strategy, two **proposals dealing with the supply of the digital content**[358] **and, respectively, the online and other distance sales of goods.**[359] The proposed rules are designed to impact positively on the enjoyment of a number of rights protected under the Charter, including the right to an effective remedy, as they would provide consumers with clear contractual remedies when a good or a digital content is faulty and clarify the remedies available in case of disputes.

Case law

Some relevant rulings were delivered by the Court of justice concerning the issue of **the cost of proceedings**. *Orizzonte Salute*[360] concerned the compatibility with relevant provisions of **EU law on review procedures to the award of public procurement contracts**[361], read in light of Article 47 of the Charter and the principles of effectiveness and equivalence, of **national legislation providing for elevated fees for access to justice in the field of public procurement**. The CJEU ruled that relevant EU provisions, interpreted in light of Article 47 of the Charter and the principles of equivalence and effectiveness, do not preclude provisions of national law which set out a scale of standard court fees applicable only in administrative proceedings relating to public procurement provided that the level of the court fee does not constitute a barrier to the access to a court or render exercise of public procurement judicial review rights excessively difficult. Similarly, national legislation charging multiple court fees to an individual who brings several court actions concerning the same award of a public contract or obliging that individual to pay additional court fees in order to be able to raise supplementary pleas concerning the same award of a public contract do not raise issues of compatibility with the right to an effective remedy or the principle of effectiveness. However, the national court shall be required to relieve that individual of the obligation to pay cumulative court fees if the subject-matter of the actions submitted by an individual or the pleas raised by that individual within the same proceedings are not separate or do not amount to a significant enlargement of the subject-matter of the pending dispute.

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[358] Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content, COM(2015) 634 final, 9.12.2015, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015PC0634. See also above under Article 38.

[359] Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods, COM(2015) 635 final, 9.12.2015, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2015%3A635%3AFIN.

[360] CJEU judgment of 6 October 2015 in Case C-61/14, *Orizzonte Salute - Studio Infermieristico Associato v Azienda Pubblica di Servizi alla persona San Valentino - Città di Levico Terme and Others.*

[361] Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, OJ 1989 L 395, p. 33, as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, OJ 2007 L 335, p. 31.

In another ruling in the field of **consumer protection**[362], where the applicants had challenged the referral of their case before the county court competent under national law, claiming that proceedings before that court would result in higher costs than those brought before the local court, the Court of Justice provided **guidance on the criteria to be taken into account when assessing the compatibility of national rules with the principle of effectiveness of judicial protection, in light of possible procedural difficulties that would arise from the costs of the proceedings or the geographical location of the court designed as competent**.

The CJEU also delivered a judgement concerning the **interpretation of the Regulation on the European Order for Payment Procedure as it concerns the rights of defaulting defendants in case of deficient service of a payment order**.[363] The case concerned a situation where European payment orders were not or were not effectively served on the defendants because they had moved their domicile. The Court ruled that the Regulation must be interpreted as meaning that the procedures laid down in Articles 16 to 20 of the Regulation, which aim at protecting defendants in cases of default, are not applicable where it appears that a European order for payment has not been served in a manner consistent with the minimum standards laid down in Articles 13 to 15 of the Regulation. If such an irregularity is exposed only after a European order for payment has been declared enforceable, the defendant must have the opportunity to raise that irregularity and obtain, if it is duly established, the invalidation of the declaration of enforceability. This however shall be regulated by national law.

Alpha Bank Cyprus Ltd[364] concerned the right of an **addressee of a judicial document to be served from abroad to refuse service on the basis that the document is not drawn up in or translated into an appropriate language** as foreseen in the Regulation on service of documents.[365] The Court stated that the Regulation establishes the principle of direct transmission of judicial and extrajudicial documents between the Member States, which has the effect of simplifying and accelerating the procedures. However, the Court reminded that those objectives cannot be attained by undermining in any way the rights of the defence of the addressees, which derive from the right to a fair hearing, enshrined in the second paragraph of Article 47 of the Charter. Therefore, the Court established that it is important not only to ensure that the addressee of a document actually receives the document in question, but also that he is able to know and understand effectively and completely the meaning and scope of the action brought against him abroad, so as to be able effectively to assert his rights in the Member State of transmission. With this in mind the Court concluded that the receiving agency is required, in all circumstances and without it having a margin of discretion in that regard, to inform the addressee of a document of his right to refuse to accept that document, by using systematically for that purpose the standard form set out in Annex II to that Regulation.

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[362] CJEU judgement of of 12 February 2015 in Case C 567/13 *Nóra Baczó and János István Vizsnyiczai v Raiffeisen Bank Zrt.*

[363] CJEU judgement of 4 September 2014 in Joined Cases C‑119/13 *Eco cosmetics* and C‑120/13 *Raiffeisenbank St. Georgen.*

[364] CJEU, judgment of 16 September 2015 in Case C-519/13, *Alpha Bank Cyprus Ltd.*

[365] Article 8 of Regulation (EC) 1393/2007 the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), OJ L 324, 10.12.2007, p.79.

In *Emesa-Trefileria*[366], the General Court carried out an assessment of whether the **Commission proceedings in cartel cases, and their judicial review by the General Court and Court of Justice fulfil the criteria of Article 47 of the Charter** on the right to an effective remedy and a fair trial. Making reference to earlier jurisprudence[367], the General Court stated that such procedures are fully compatible with the Charter.

Furthermore, a ruling[368] by the CJEU was issued on **appeals of decisions taken by National Regulatory Authorities (NRAs)** in the context of the application of EU rules for the internal market in natural gas.[369] The case concerned in particular the **right of gas operators to appeal NRA's decisions not addressed to them**. In its judgement, the CJEU held that relevant EU provisions, read in light of Article 47 of the Charter, give a gas operator the possibility to appeal before a national court or tribunal a NRA decision relating to the gas network code.

Sähköalojen ammattiliitto ry[370] also concerned *locus standi*, and in particular the **compatibility with relevant provisions of the Posted Workers Directive**[371]**, read in the light of Article 47 of the Charter, of national rules of the Member State of the seat of the undertaking from barring a trade union from bringing an action before a court of the host Member State** where workers are posted, in order to recover for the posted workers minimum wage pay claims. The Court ruled in this case in favour of the applicants, maintaining that the relevant provisions of the Posted Workers Directive prevent a rule of the Member State of the seat of the undertaking that has posted workers to the territory of another Member State — under which the assignment of claims arising from employment relationships is prohibited — from barring a trade union to bring an action before a court of the second Member State, in which the work is performed, in order to recover for the posted workers' pay claims which relate to the minimum wage, and which have been assigned to it in conformity with the law in force in the second Member State.[372]

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[366] GC, judgement of 15 July 2015 in Case T‑406/10, *Emesa-Trefilería SA and Industrias Galycas SA v European Commission.*

[367] CJEU judgement of 18 July 2013 in Case C-501/11, *Schindler Holding Ltd and Others v European Commission*.

[368] CJEU judgment of 19 March 2015 in Case C-510/13, *E.ON Földgáz Trade Zrt. v Magyar Energetikai és Közmű-szabályozási Hivatal*.

[369] Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211, 14.8.2009, p. 94–136, Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, OJ L 176, 15.7.2003, p. 57–78 and Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks, OJ L 289, 3.11.2005, p. 1.

[370] CJEU judgement of 12 February 2015 in Case C‑396/13, *Sähköalojen ammattiliitto ry v Elektrobudowa Spółka Akcyjna.*

[371] Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ L 018 , 21.01.1997, p. 1.

[372] The case is also discussed more in detail under Article 12 above.

Another relevant judgement was rendered in the field of **asylum**[373], where the CJEU ruled that the Asylum Procedures Directive read in conjunction with Article 47 of the Charter, did not preclude **national legislation that did not confer suspensory effect on an appeal brought against a decision not to further examine a subsequent application for asylum.**[374]

In the field of **environmental legislation**, of particular interest are **joint cases C-404/12 P, C-405/12 P**[375] **and joint cases C-401/12 P, C-403/12 P**[376] **on access to justice in environmental matters** and the question whether private parties can rely on Article 9(3) of the Aarhus Convention in order to challenge the legality of EU acts before the General Court or the Court of Justice. The judicial proceedings concerned two actions brought against the Commission for having refused to initiate administrative reviews under Regulation 1367/2006[377], which grants to qualifying NGOs the possibility to request a EU institution that has adopted an administrative act under environmental law or, in case of an alleged administrative omission, should have adopted such an act, to do an internal review of that act or of that omission. In both cases, the General Court had originally annulled the Commission's decisions not to initiate an administrative review, finding that the limitation set by Regulation 1367/2006 that only measures of individual scope can be administratively reviewed was too restrictive and contrary to Article 9(3) of the Aarhus Convention. In its two rulings of 13 January 2015, the Court of Justice, however, concluded that Article 9(3) of the Aarhus Convention could be invoked by individuals to challenge the legality of EU acts, on grounds that this provision does not contain any unconditional and sufficiently precise obligation capable of directly regulating the legal position of individuals. Without assessing the case in light of Article 47 of the Charter, the Court found that Regulation 1367/2006 could not be regarded as intended to implement specific obligations under the Aarhus Convention and concluded that the General Court was not entitled to review the legality of Regulation 1367/2006 in light of the Union's obligations under the Convention.

Finally, in *East Sussex County Council*[378], the CJEU was asked for a preliminary ruling inter alia on the question whether Article 6 ("Access to justice") of Directive 2003/4/EC[379] must be interpreted as precluding a **limited administrative and judicial review** as provided for in English law. In that context, the CJEU recalled that Article 47 of the EU Charter enshrines the right to an effective remedy

[373] CJEU judgement of 17 December 2015 in Case C-239/14 *Abdoulaye Amadou Tall v Centre public d'action sociale de Huy*.

[374] See above under Article 18.

[375] CJEU, judgement of 13 January 2015 in joint Cases C-404/12 P and C-405/12 P, *Council of the European Union and European Commission v Stichting Natuur en Milieu and Pesticide Action Network Europe.*

[376] CJEU, judgement of 13 January 2015 in joint Cases C-401/12 P to C-403/12 P, *Council of the European Union and Others v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht.*

[377] Regulation (EC) No 1367/2006of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 264, 06.09.2006, p.13.

[378] CJEU, judgment of 6 October 2015 in Case C-71/14, *East Sussex County Council v Information Commissioner.*

[379] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EC, OJ L 41, 14.2.2003, p. 26.

before an impartial tribunal. The CJEU found that Article 6 of Directive 2003/4/EC is not precluding such a limited review, provided, notably, that it is carried out on the basis of objective elements.

Application by Member States

On 10 December 2015, the European Commission initiated an **infringement procedure against Hungary** concerning the compliance of Hungarian legislation adopted as a response to the migration crisis.[380] A number of issues raised concern the **compatibility of the new Hungarian rules on asylum procedures with provisions on the right to an effective remedy contained in the recast Asylum Procedures Directive**[381]**, as well as with Article 47 of the Charter**. These issues pertain, in particular, to the restricted scope and effectiveness of appeals procedures and the potential lack of judicial independence.

Rulings of the UK court of Appeal

A case before the UK Court of Appeal concerned the fact that Google had tracked private information about the claimants' internet usage without their knowledge or consent by using cookies and given that information to third parties, while Google's publicly stated position is that such activity would not be performed without users' consent. The claimants sought damages under the UK Data Protection Act for distress while not having suffered pecuniary loss. The court held that "damage" could include moral non-pecuniary damage such as distress. The court further held that it was important that there was an effective remedy available for a distressing invasion of privacy as Articles 7 and 8 of the Charter make specific provision for the protection of personal data and that the Data Protection Act, when interpreted literally as "damage" being pecuniary loss, had not effectively transposed Directive 95/46 into domestic law. The Court concluded that Article 47 applies directly between the parties and that the national norms creating obstacles to the access to effective judicial remedies in violation of the Charter can be simply set aside, with the result that compensation would be recoverable for any damage suffered. (UK, Court of Appeal, case no A2/2014/0403 of 27 March 2015)

A further case before the UK Court of Appeal concerned employment claims by two employees of the embassies of Sudan and Libya in the UK which had been turned down in first instance on the basis of the UK State Immunity Act 1978. Taking into account that the Charter was applicable as some of the claims concerned EU law issues (the Racial Equality and Working Time Directives), the Court ruled that its Article 47 could be relied on horizontally (between private parties) as it reflected general principles of EU law. On this

[380] See also above under Article 18 and below under Article 48.

[381] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013, OJ L 180, 29.6.2013, p. 60, Article 46.

basis, the Court held that invoking state immunity for these employment claims amounted to a breach of Article 47 of the Charter, which guarantees access to the courts, and thus set aside the relevant provision of the State Immunity Act (UK, Court of Appeal, case *Benkharbouche v Sudan* and *Janah v Libya* no A2/2014/0403 of 27 March 2015).

Ruling of the Czech Constitutional Court

In the Czech Republic, the Ministry of Education, Youth and Sport had decided to stop funding a project co-financed by the EU Operational Programme Research and Development for Innovations as it claimed that the Technical University of Ostrava had broken financial rules. The case, including the question whether there should be at all judicial review, reached the Constitutional Court, which concluded that the absence of judicial review would probably be contrary to Article 47 of the Charter. (Czech Republic, Constitutional Court, case no CZ:US:2015:Pl.US.12.14.2 of 16 June 2015)

Article 48 – Presumption of innocence and right of defence

Article 48 of the Charter provides that everyone who has been charged shall be presumed innocent until proven guilty according to the law. It further specifies that respect for the right to defence of anyone who has been charged shall be guaranteed.

Legislation

The European Union has set itself an ambitious legislative programme on **procedural rights for suspects and accused persons** which directly contributes to strengthen citizens' fundamental rights, notably the right to a fair trial as protected by Article 6 of the European Convention on Human Rights and by Articles 47 and 48 of the Charter of Fundamental Rights of the European Union. Since 2009 considerable progress has been made with the adoption of three **Directives on the right to interpretation and translation**[382]; **on the right to information**[383]; and on the **right of access to a lawyer.**[384] In 2015 agreement was reached between European Parliament and Council[385] on 27

[382] Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L280, 20.10.2010, p.1

[383] Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceeds, OJ L 142, 22.5.2012, p.1.

[384] Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 291, 22.10.2013, p.1.

[385] See Press Release, http://europa.eu/rapid/press-release_IP-16-291_en.htm ; Press Release by European Parliament: Fair trials: civil liberties MEPs back new EU rules on presumption of innocence, 10 November 2015,

October on a new Directive on the **presumption of innocence and the right to be present at trial**[386], and on 15 December on a Directive on **special safeguards for children in criminal proceedings**.[387] The negotiations on the proposed **Directive on provisional legal aid and legal aid in European Arrest Warrant proceedings**[388] are on-going.

The **Victims' Rights Directive**[389] entered into application in the Member States on 16 November 2015. The new EU rules provide for a set of rights for victims, including the right to be recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner. To minimise the risk of being hurt again, the Directive also introduces a right to individual assessment of a victim's protection needs.[390]

Of particular importance for Article 48 is that family members of deceased victims are defined as victims and benefit from all rights in the Directive and that family members of surviving victims have the right to support and protection. Family members are widely defined and include also non-married intimate partners. Moreover, all communication with victims must be made in a way that victims understand (linguistically or otherwise); an emphasis is made on child-sensitive communication. Victims have the right to be informed about a decision not to proceed with prosecution of the offender and will also have the entirely new right to have such decision reviewed.

Application by Member States

Among the issues raised in the context of the **infringement procedure initiated on 10 December 2015 by the European Commission against Hungary** concerning the compliance of Hungarian legislation adopted as a response to the migration crisis[391], was the fact that the **Hungarian law on fast-tracked criminal proceedings for irregular border crossings** does not respect provisions of the

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available at: http://www.europarl.europa.eu/news/en/news-room/20151109IPR01741/Fair-trials-civil-liberties-MEPs-back-new-EU-rules-on-presumption-of-innocence ; Press Release by Council: Council confirms the agreement found with EP , 4 November 2015, available at: http://www.consilium.europa.eu/en/press/press-releases/2015/11/04-presumption-of-innocence/ .

[386] Directive (EU) 2016/343 of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1459339817759&uri=CELEX:32016L0343 .

[387] Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings, COM (2013) 822 final, 27.11.2013, available at: http://eur-lex.europa.eu/procedure/EN/2013_408;http://www.consilium.europa.eu/en/press/press-releases/2015/12/16-procedural-safeguards-for-children-in-criminal-proceedings/; http://www.europarl.europa.eu/news/en/news-room/20160303IPR16952/MEPs-strengthen-rights-of-children-in-criminal-proceedings; see also above under Article 24.

[388] Proposal for a Directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings, COM (2013) 824 final, 27.11.2013, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52013PC0824

[389] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 25.10.212, p.57.

[390] See above under Article 3.

[391] See above under Articles 18 and 47.

Directive on the right to interpretation and translation in criminal proceedings[392], which ensures that every suspect or accused person who does not understand the language of the proceedings is provided with a written translation of all essential documents, including any judgment.

Lithuanian legislative proposal

A draft law stipulated amongst others that an alien's request for a residence permit should not be considered if a competent institution had received information that the alien is suspected of committing a crime abroad. The Ministry of Justice in its opinion pointed out that such a provision might be contrary to the presumption of innocence enshrined in Article 48 of the Charter. The provision at issue was not included in the law as adopted. (Lithuania, Art. 26(1) of the Law on the Legal Status of Aliens (*Įstatymas „Dėl užsieniečių teisinės padėties“*))

Article 49 – Principles of legality and proportionality of criminal offences and penalties

Some fundamental rights are guaranteed in absolute terms and cannot be subject to any restrictions. Interferences with other rights may be justified if, subject to the principle of proportionality, they are necessary and genuinely serve to meet objectives of general interest recognised by the Union.

Legislation

Among the package of measures adopted in December 2015 by the European Commission to step up the fight against terrorism, the **proposal for a Directive on Terrorism**[393] highlights the importance of respecting fundamental rights in transposing criminal law provisions into national law. It aims to protect the fundamental rights of victims and potential victims. It would criminalise preparatory acts, such as training and travel abroad, for terrorist purposes, aiding or abetting, inciting and attempting terrorist acts, and terrorist financing. It also seeks to ensure that any limits on fundamental rights of suspects and accused do not go further than what is strictly necessary, thus upholding the principles of legality and proportionality of criminal offences and penalties (Article 49 of the Charter).

Article 50 – Right not to be tried or punished twice in criminal proceedings for the same criminal offence

The *ne bis in idem* principle is one of the cornerstones of criminal law and is based on the principle that no one shall be held liable to be tried or punished again in criminal proceedings for an offence

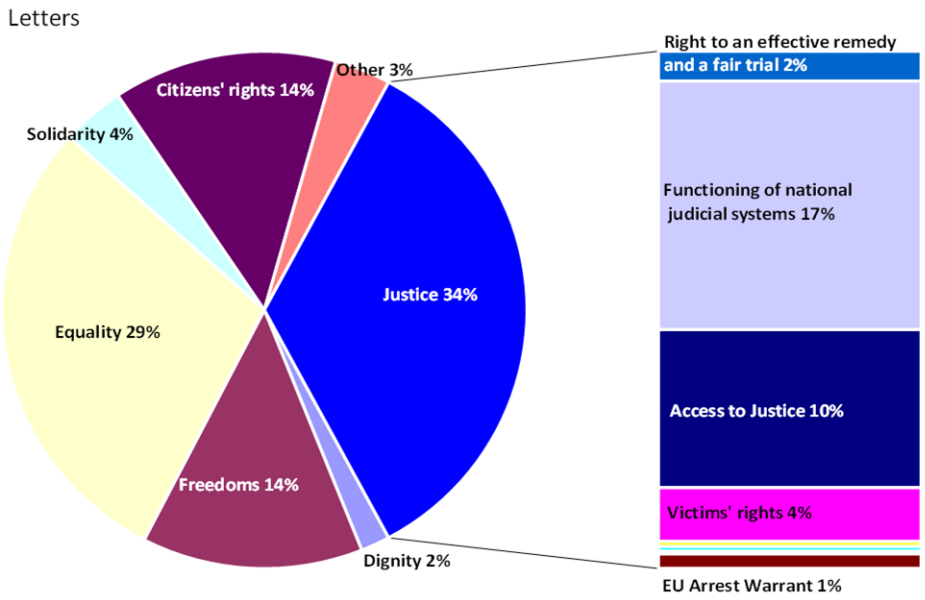
[392] Directive 2010/64/EU on the right to interpretation and translation in criminal proceeds to be transposed by 27 October 2013.

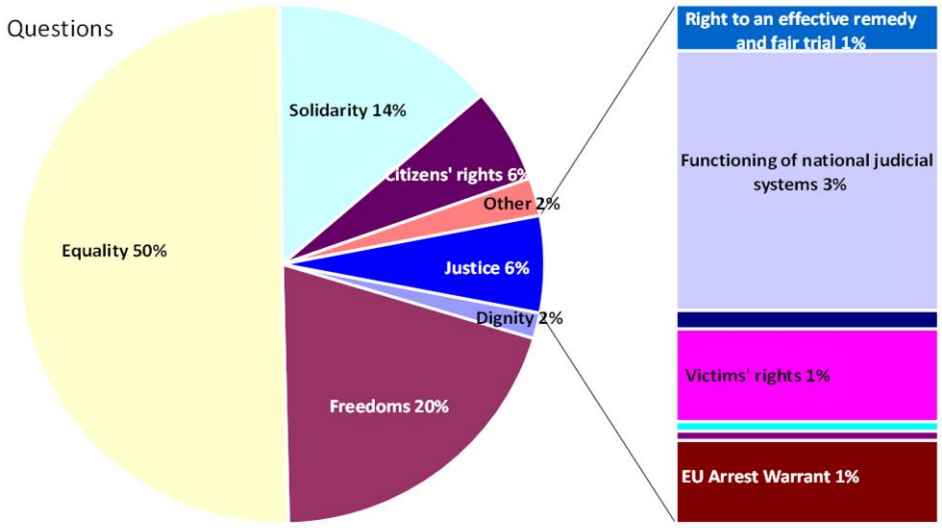
[393] Proposal for a Directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism, COM(2015) 625 final, 2.12.2015, available at: https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-625-EN-F1-1.PDF

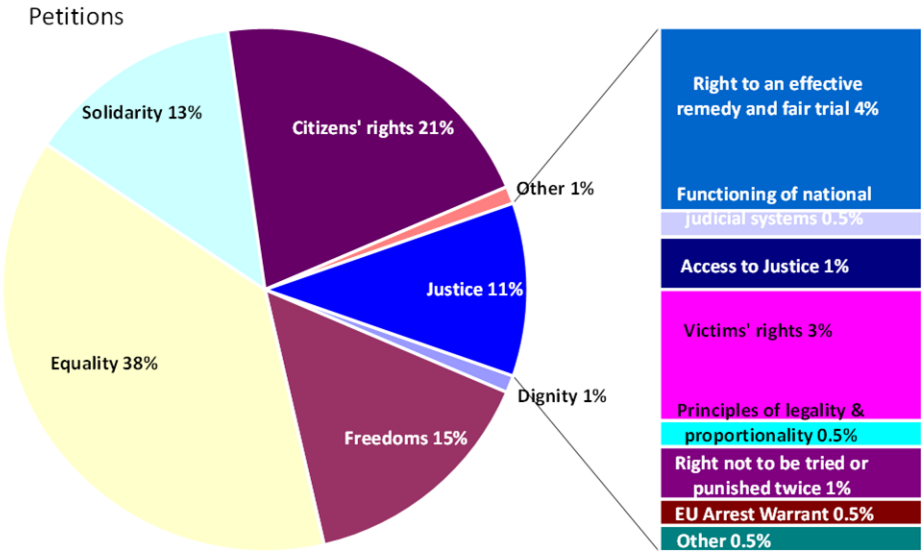
for which he or she has already been finally acquitted or convicted. Article 50 provides that criminal laws should respect this.

Ruling of the Greek Council of State

Referring to CJEU case law (C-617/10, Akerberg Fransson), the Greek Council of State found that a double penalty (monetary administrative fine and penal sentence) imposed for smuggling was not contrary to Article 50 of the Charter (Greece, Council of State, case no 1741/2015 of 8 May 2015).




Questions
Solidarity 14%
Citizens' rights 6%
Other 2%
Justice 6%
Dignity 2%
Freedoms 20%
Equality 50%
Right to an effective remedy and fair trial 1%
Functioning of national judicial systems 3%
Victims' rights 1%
EU Arrest Warrant 1%


Petitions
Solidarity 13%
Citizens' rights 21%
Other 1%
Justice 11%
Dignity 1%
Freedoms 15%
Equality 38%
Right to an effective remedy and fair trial 4%
Functioning of national judicial systems 0.5%
Access to Justice 1%
Victims' rights 3%
Principles of legality & proportionality 0.5%
Right not to be tried or punished twice 1%
EU Arrest Warrant 0.5%
Other 0.5%

Title VII

General provisions governing the interpretation and application of the Charter

An example for justifying limitations of fundamental rights in accordance with **Article 52 (1) of the Charter** is the **EU proposal to amend the existing EU legislation on acquisition and possession of firearms.** The Commission proposal lays down the minimum requirements that Member States should impose as regards the acquisition and possession of the different categories of firearms, depending on the potential danger they represent, and regulates the conditions for the transfer of firearms across the EU, while granting more flexible rules for hunting and target shooting. In view of its purpose and the conditions put on the acquisition and possession of firearms, this measure would introduce limitations on the right to property in line with the limitations to fundamental rights allowed under Article 52 (1)of the Charter.

Article 51 – Field of application

The scope of applicability of the Charter is defined in Article 51. It clearly states that it is addressed to all EU institutions, bodies, offices and Agencies and to the Member States in so far as the latter are implementing EU law. It further clarifies that the Charter cannot extend the field of application of EU law or any competences of the EU as defined in the Treaties.

Ruling of the Supreme Court of Cyprus

Ruling on the national data retention law transposing the Data Retention Directive, the Supreme Court of Cyprus concluded that, although the national law states in its preamble that it purports to transpose the Data Retention Directive, its ambit is wider than that of the directive as it seeks to regulate access to data in addition to the duty to retain data. Therefore, the Charter was held not to be applicable. (Cyprus, Supreme Court, case no 216/14 and 36/2015 of 27 October 2015).

Article 52 – Scope and interpretation of rights and principles

Article 52 lays down main general provisions on the scope and interpretation of rights and principles. In its first paragraph it defines the strict conditions under which the rights of the Charter can be limited. It also explains the relation of the Charter to the ECHR aiming at the highest level of fundamental rights protection possible (paragraph 3). It also clarifies that the principles named in the Charter may be implemented by the EU institutions in their legislative and executive acts – and similarly by the Member States where they implement EU law (paragraph 5). Yet they can only be invoked in court in view of the interpretation of such acts. This means that these principles do not confer subjective rights on the individual.

Legislation

As mentioned above under Article 17 on the right to property, following the Paris, Copenhagen and Thalys train terror attacks in 2015, the Commission tabled in November 2015 a proposal to **amend the existing EU legislation on acquisition and possession of firearms**.[394] The Commission proposal aims to lay down the minimum requirements that Member States should impose as regards the acquisition and possession of the different categories of firearms, depending on the potential danger they represent, and regulates the conditions for the transfer of firearms across the EU, while granting more flexible rules for hunting and target shooting. It covers the life cycle of a firearm from production to trade, ownership and possession, deactivation and destruction. The proposal also

[394] Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons, COM/2015/0750 final - 2015/0269 (COD), 18.11.2015, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2015%3A750%3AFIN.

seeks to improve consistency with international standards. In view of its purpose and the conditions put on the acquisition and possession of firearms, this measure introduces limitations on the right to property in line with the limitations to fundamental rights allowed under Article 52 (1)of the Charter.

Case law

Another example concerning justified limitations of fundamental rights is provided by the General Court's decision the case of ***Zentralverband des Deutschen Bäckerhandwerks e.V. c/ Commission*** mentioned above.[395] In this case, the Central Association of German Bakers alleged a violation of the fundamental rights of its members, in particular of the freedom to choose an occupation, the freedom to conduct a business and the right to property, and tried to annul Commission Implementing Decision 2013/663/EU. The General Court recalled that Article 52(1) of the Charter acknowledges that limitations may be imposed on the exercise of the rights and freedoms recognized by the Charter, provided that such limitations are provided for by law, respect the essence of those rights and freedoms and, in accordance with the principle of proportionality, are necessary and meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others.

Danish legislative proposal

An amendment of the Danish Security Intelligence Service Act and Customs Act provided for access by the Danish Security and Intelligence to information recorded by the airline companies of passengers and crew when travelling to and from Denmark (PNR-information). The preparatory works for this draft bill contained an assessment of its compatibility with the Charter, in the light of relevant CJEU case law. The conclusion was that the limitation of the rights as protected by Articles 7 and 8 of the Charter was justified, in line with Article 52 of the Charter. (Denmark, Bill no. 204 of 5 May 2015 amending the Act on the Danish Security Intelligence Service (PET) and the Customs Act)

Article 53 – Level of protection

Article 53 ensures that nothing in the Charter will be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised by Union law, international law and international agreements to which the Union or all the Member States are party, including the ECHR.

[395] CJEU, judgment of 7 October 2015 in Case T-49/14, *Zentralverband des Deutschen Bäckerhandwerks e.V. c/ Commission*, see above under Article 15.

Its main aim is thus to provide the minimum standard of fundamental right protection allowing for wider protection under instruments other than the Charter where they are applicable.

Article 54 – Prohibition of abuse of rights

Furthermore Article 54 provides for a safeguard against an abuse of the Charter rights. It states that nothing in the Charter can be interpreted as implying any right to engage in activities aimed at the destruction of rights or freedoms recognised in the Charter or at their limitation beyond its extent as envisaged in the Charter.