



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 13 May 2013

**9297/13
ADD 2**

**FREMP 48
JAI 345
COHOM 78
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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 8 May 2013

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

No Cion doc.: SWD(2013) 172 final - Part 1

Subject: COMMISSION STAFF WORKING DOCUMENT
on the Application of the EU Charter of Fundamental Rights in 2012
Accompanying the document
Report from the Commission to the European Parliament, the Council, the
European Economic and Social Committee of the Regions
2012 Report on the application of the EU Charter of Fundamental Rights

Delegations will find attached Commission document SWD(2013) 172 final - Part 1.

Encl.: SWD(2013) 172 final - Part 1



Brussels, 8.5.2013
SWD(2013) 172 final

Part 1/9

COMMISSION STAFF WORKING DOCUMENT

on the Application of the EU Charter of Fundamental Rights in 2012

Accompanying the document

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

2012 Report on the application of the EU Charter of Fundamental Rights

{COM(2013) 271 final}
{SWD(2013) 171 final}

INTRODUCTION

After the entry into force of the [EU Charter of Fundamental Rights](#)¹, 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 regards the respect of fundamental rights, in particular when it legislates. The Commission is further committed to preparing annual reports to better inform citizens on the application of the Charter and to measure progress in its implementation. This Annual Report meets the longstanding and legitimate expectation of placing fundamental rights at the heart of EU policies. It is intended to act as the basis of an informed dialogue between all EU institutions and Member States.

This Report covers the year 2012 and informs the public of the 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, 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 for the first time information of the case law of national Courts on the Charter, based on the contributions received from Member States and further analysis done 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 of Fundamental Rights of the European Union.

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. 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 when they implement EU law. 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.

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**. 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 problem, the Commission can contact the national authorities to have it fixed, and ultimately it can take a Member State to the CJEU. The objective of these proceedings 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.

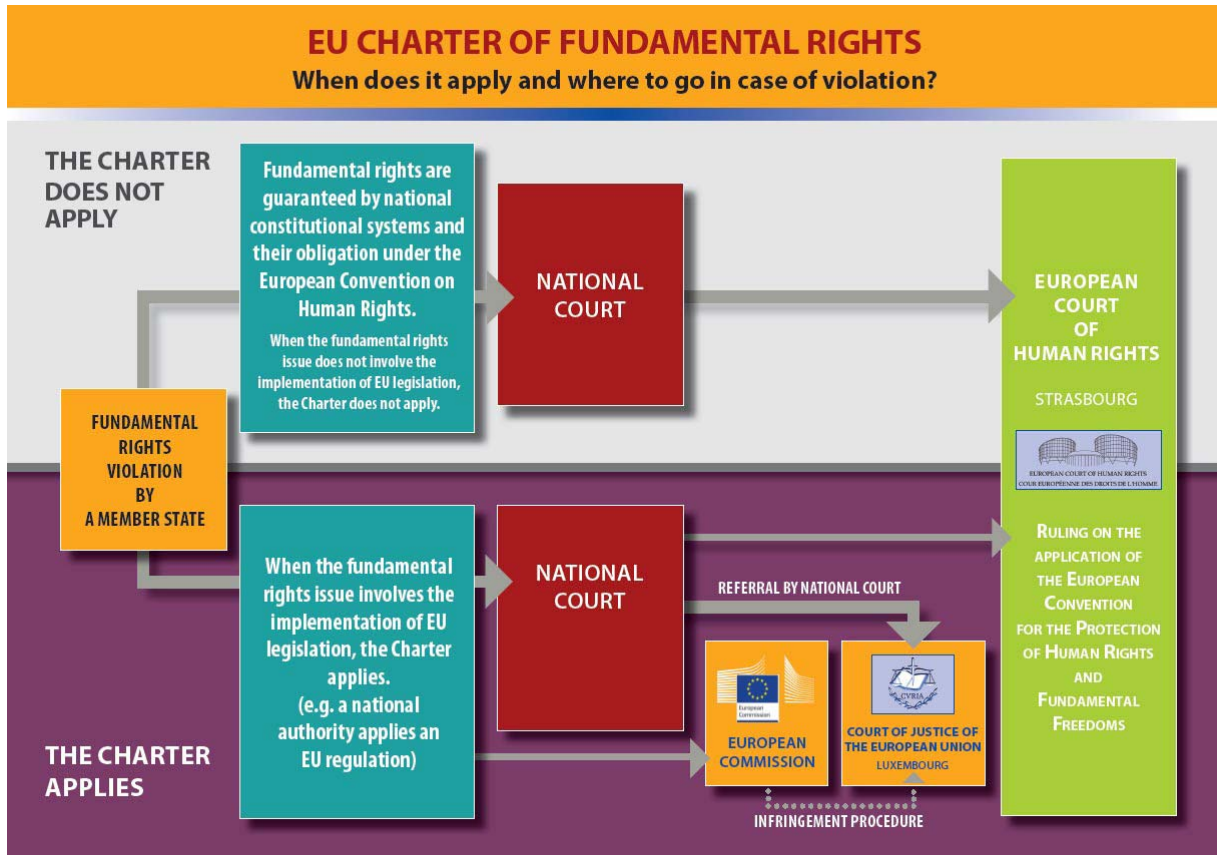
When individuals or businesses consider that an act of the EU institutions directly affecting them violates their fundamental rights enshrined in the Charter, they can bring their case before the CJEU, which, subject to certain conditions, has the power to annul such an act.

The Commission cannot examine 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 need to be directed to the national level in the first instance.

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

In addition, all EU countries have made commitments under **the European Convention on Human Rights (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 Court³.

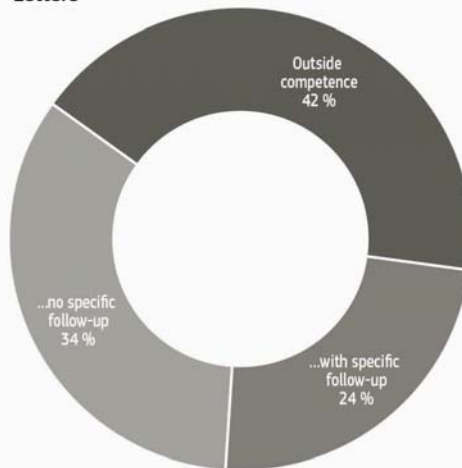


Overview of the letters and questions to the Commission on fundamental rights

Among the **letters from the general public** on fundamental rights issues received by the Commission in 2012, 58% concerned situations where the Charter could apply. 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).

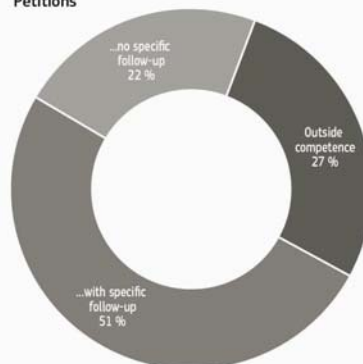
³ Available at: <http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Checklist/>

Letters



Among the **questions and petitions from the European Parliament** approximately 75% 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.

Petitions



Questions

