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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

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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 3.

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Part 3/9

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}

1. Dignity

Human dignity

The **EU reached an important agreement on the conditions for the transfer of asylum seekers in the EU** (Dublin Regulation). In accordance with case law of the CJEU, asylum seekers cannot be sent back to a Member State where there is a serious risk of violation of their fundamental rights under the newly agreed rules.

Right to life

Right to the integrity of the person

New rules on the surveillance of the external EU sea borders prohibit disembarkation or handing over of a person to the authorities of a country in contravention of the principle of *non-refoulement*, or when there is a risk of expulsion or return to another country in contravention of that principle.

Prohibition of torture and inhuman or degrading treatment or punishment

Prohibition of slavery and forced labour

The **CJEU** specified that the **minimum conditions for the reception of asylum seekers** laid down in EU law (Directive 2003/9) **should be applied in all circumstances**, regardless of whether a Member State is responsible for examining the application for asylum under the Dublin Regulation.

The **new Horizon 2020 proposal** reinforces the legal status of fundamental rights in the design and implementation of EU research and innovation activities.

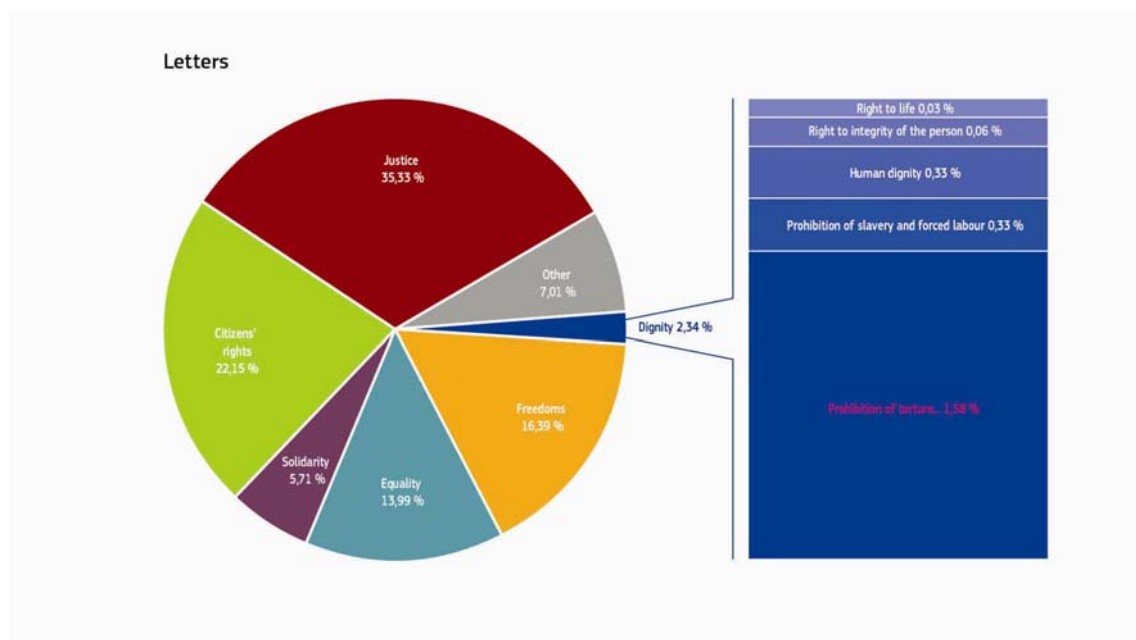
The **EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016** proposes 40 concrete and time-bound actions.

Human dignity

Human dignity 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. The rights and freedoms under the title Dignity, such as the right to life, and the prohibition of torture and slavery, must be respected so we can exercise 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.

Member States and airports wishing to deploy technology to detect unsafe objects must comply with minimum conditions set by EU rules. The Commission received a petition (0749/2012) on the extension of the security scanner trial at Manchester airport. The petitioner expressed his concerns on the health impact of the x-ray security scanners and lack of offering the right for passengers to opt-out from the screening at the British airports. In accordance with the requirements of EU law on security scanner screening, Member States and airports wishing to deploy technology to detect unsafe objects must comply with minimum conditions set by EU rules. Most importantly, passengers are entitled to opt out from the security scanner procedure and to be checked by alternative screening methods. Passengers must be informed of the possibility to opt out of the scanner technology used and of the conditions associated with its use. These rules contain the necessary safeguards specifically included to ensure the legislation is in compliance with the Charter, in particular the protection of human dignity.

The CJEU clarified⁴ that whenever an application for asylum is lodged at the border or in the territory of a Member State, such **Member State is obliged to grant the minimum conditions for reception of asylum seekers** laid down in EU Law⁵ regardless of whether a Member States is responsible for examining the application for asylum under EU Law. The Charter played a crucial role in the reasoning of the Court, since recital 5 of Directive 2003/9 makes specific reference to it, and in particular to the fundamental principles of **human dignity** (Article 1) and the **right to asylum** (Article 18) as the essential purpose of this piece of EU legislation. Accordingly, the obligation to provide an asylum seeker with housing, food, clothes and a daily expenses allowance, and the subsequent financial onus, are to be borne by the requesting Member State until they are transferred to the Member State responsible for examining their application.



Ethics Review and the Charter

⁴ CJEU, Case C-179/11 *Cimade and Groupe d'information et de soutien des immigrés (GISTI) v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, 27.09.2012

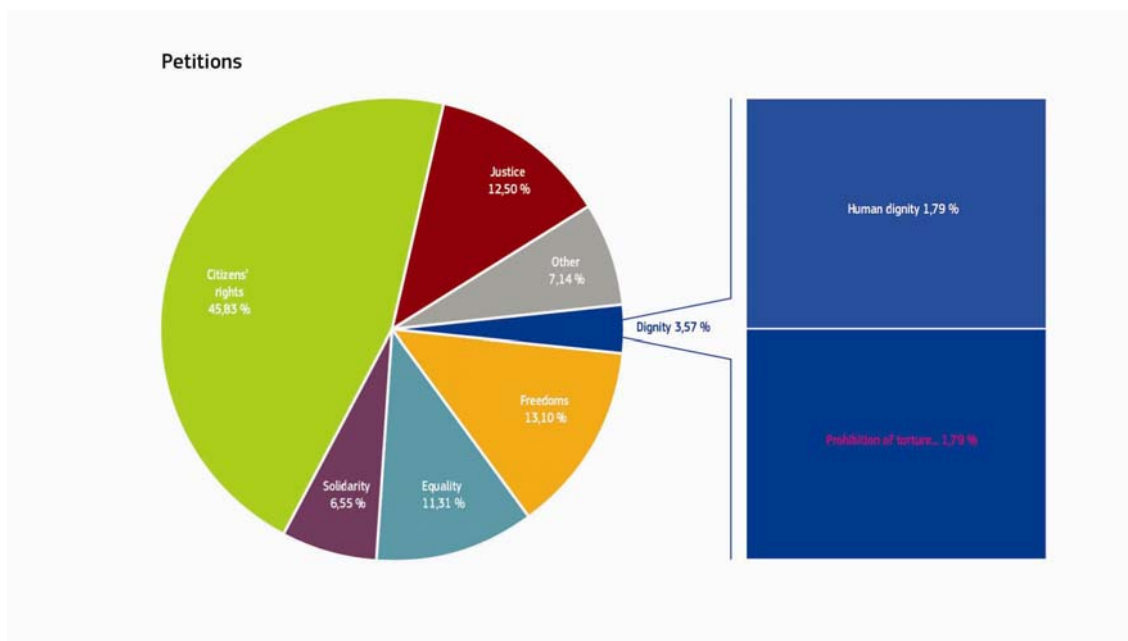
⁵ Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers, OJ L 31, 6.2.2003, p. 18 – 25.

All research activities carried out under the EU Framework Programme are reviewed for their respect of fundamental ethical principles. During the evaluation of research proposals the principles and rights of the Charter are taken into account. One of the most frequent ethical concerns emerges in the field of human interventions. The involvement of patients, vulnerable people and healthy volunteers is assessed with due regard to the articles of the Charter on human dignity, right to life, right to the integrity of the person and the principle of non-discrimination. These principles are also considered when the research is carried out in developing countries.

Concerning the involvement of children, the Charter states that "children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity." This principle is observed when assessing informed consent/assent procedures.

Another crucial concern is data protection and privacy, which is recognised by the Charter. It is applied not only to personal information, but to human tissue and biological sampling as well. As for privacy issues, the possible tracking of the location and observation of the research participants is assessed.

Dual use application of the research, enabling research in the civilian field to have potential military/terrorist applications, the right to liberty and security of person, freedom of thought, conscience and religion and the freedom of arts and sciences are also often referred to as part of the Ethics Review process.



Prohibition of inhuman or degrading treatment

The Charter provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The three institutions (EP, Council and Commission) took an important step towards safeguarding fundamental rights as part of the **new Dublin Regulation on the conditions for the transfer of asylum seekers in the EU**⁶. The agreement among the three institutions provides for the incorporation of the judgment of the CJEU in the joint cases of *N.S. and M.E. v UK*⁷, according to which asylum seekers cannot be sent back to a Member State where there

⁶ Proposal for a Regulation 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(2008) 820 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0820:FIN:EN:PDF>.

⁷ CJEU, Joint cases C-411/10 and C-493/10, *N.S. v. Secretary of State for the Home Department and M.E. and Others v. Refugee Applications Commissioner*, 21.12.2011.

is a serious risk of violation of their fundamental rights. In such cases, another Member State has to assume responsibility on the basis of the criteria established by the Dublin Regulation, within the shortest delay, in order not to jeopardize their quick access to an asylum procedure (*see right to asylum*).

The EU adopted new rules as regards the **surveillance of the external EU's sea borders** (EUROSUR)⁸, in the context of operational cooperation coordinated by FRONTEX, including on the high seas. The proposal specifies that no person should be disembarked in or handed over to the authority of a country in contravention of the principle of *non-refoulement*, or from which there is a risk of expulsion or return to another country in contravention of that principle. Persons intercepted or rescued at sea should be given an appropriate opportunity to express any reasons for believing that disembarkation in the proposed place would be in breach of the principle of *non-refoulement*.

Prohibition of trafficking in human beings

Trafficking in human beings is a contemporary form of slavery that violates human dignity. The Charter explicitly prohibits trafficking in human beings. Preventing and combating trafficking in human beings as well as protecting and assisting the victims is a priority for the Union and the Member States.

The Commission set out an **"EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016"**⁹, which complements Directive 2011/36 on preventing and combatting trafficking in human beings and protecting its victims (to be transposed by 6 April 2013). The strategy adopts a strong gender and fundamental rights perspective, as well as a victims centred approach. It proposes a series of 40 concrete and time-bound actions grouped under the following key priorities: 1) identifying, protecting and assisting victims of trafficking, 2) stepping up the prevention of trafficking in human beings, 3) Increased prosecution of traffickers, 4) enhanced coordination and cooperation among key actors and policy coherence, 5) increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings. The strategy emphasizes that mainstreaming of fundamental rights in the legislative and policy framework for addressing trafficking in human beings is necessary for ensuring coherence of action.

The **EU Anti-Trafficking Day** on 18 October, is marked every year with the aim to raise awareness on trafficking in human beings and to increase the exchange of information and networking between the different actors working in the field of trafficking in human beings. For 2012, the Cyprus Presidency and the European Commission organised a conference to mark the 6th EU Anti-Trafficking Day looking into future actions and advocating a strategic approach 'Working together towards the Eradication of Trafficking in Human Beings: The Way Forward'.

⁸ Proposal for a Regulation establishing the European Border Surveillance System (EUROSUR), 12.12.2011, COM(2011) 873 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0873:FIN:EN:PDF>

⁹ Communication on a EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, 19.6.2012, COM(2012) 286 final. Available at: http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf

Questions

