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FREMP 74  
JAI 367  
POLGEN 36  
ASILE 14  
COHOM 40  
COPEN 142  
CULT 36  
DATAPROTECT 47  
DROIPEN 81  
INF 74  
JUSTCIV 104  
MI 323  
SOC 246  
VISA 141  
EDUC 139

#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, 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**

{SWD(2016) 158 final}

# 1. Introduction

The EU faced numerous challenges in 2015: security threats, unprecedented arrivals of refugees and migrants, a rise in populism and xenophobia. These put EU values and solidarity to the test. Facing such challenges, it is vital to uphold the EU's common values of democracy, fundamental rights and the rule of law.

The Charter of Fundamental Rights entered into force in 2009. It has proven to be an important reference point for European<sup>1</sup> and national courts. The European Commission promotes its respect in all EU actions and works closely with national, European and international organisations to this end.

This sixth annual report reviews how the EU and its Member States applied the Charter in 2015. The focus section presents the 2015 Annual Colloquium on Fundamental Rights, which debated 'Tolerance and respect: preventing and combating Antisemitic and anti-Muslim hatred in Europe'.

In 2016, the Colloquium on Fundamental Rights will be devoted to the issue of "Media Pluralism and Democracy". The colloquium will discuss the links between media pluralism and democracy in the context of the changing media environment characterised by increased media convergence and the development of the digital single market. It will explore the many aspects of media pluralism ranging from media independence and media regulation to questions of freedom of speech and journalistic freedom. It will be preceded by consultations with civil society and stakeholders.

## 2. Charter application in and by the EU

### *2.1 Charter mainstreaming and better regulation*

Systematic fundamental rights checks during the legislative process are necessary to ensure compliance of draft legislation with the Charter. The Commission's **Better Regulation agenda**<sup>2</sup> revised existing guidelines for improving impact assessments of draft legislation and policies. Better regulation aims to boost transparency in EU decision-making and improve the quality of laws. A 'better regulation toolbox'<sup>3</sup> includes a fundamental rights checklist that the Commission is to use when conducting assessments. In 2015, the Commission trained specific departments to ensure that officials have the tools to apply a fundamental rights-based approach to policy and lawmaking.

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<sup>1</sup> General Court, Civil Service Tribunal, and Court of Justice (CJEU).

<sup>2</sup> Better regulation for better results — An EU agenda, COM(2015) 215 final, 19.05.2015.

<sup>3</sup> [http://ec.europa.eu/smart-regulation/guidelines/toc\\_tool\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/toc_tool_en.htm). See Tool 24 'Fundamental Rights and Human Rights', p. 176.

In September 2015, the European Parliament adopted a resolution on fundamental rights in the European Union 2013-2014<sup>4</sup>. It set out concerns on individual fundamental rights situations in some Member States and called for a framework to monitor the rule of law. In June 2015, the Council adopted conclusions on the Charter's application in 2014.<sup>5</sup>

## ***2.2. Mainstreaming the Charter in legislative and policy actions***

EU institutions are obliged to comply with the Charter in all their actions. This compliance is scrutinised by the CJEU. In 2015, the Commission continued to ensure systematic compliance checks of its legislation and policies. In addition, it advanced legislative projects to promote fundamental rights.

In December 2015, Parliament and Council agreed the **data protection reform package**.<sup>6</sup> This is essential to protect the fundamental rights to privacy and protection of personal data (Articles 7 and 8 of the Charter) and is a key building block of the **digital single market**. It consists of a general Data Protection Regulation<sup>7</sup> and a Data Protection Directive for police and criminal justice authorities<sup>8</sup>. The directive will replace existing legislation and become applicable in early 2018.

In 2015, Parliament and Council agreed directives on the **presumption of innocence and the right to be present at trial**<sup>9</sup> and on **special safeguards for children in criminal proceedings**.<sup>10</sup> These will promote the fundamental rights to an effective remedy and a fair trial, and to the presumption of innocence and rights of defence (Articles 47 and 48 of the Charter). The **Victims' Rights Directive**<sup>11</sup> entered into force in November 2015. It lays down binding rights for victims, including the right to be recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner.

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<sup>4</sup> 2014/2254(INI), available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0286&language=EN&ring=A8-2015-0230>.

<sup>5</sup> Outcome of the Council meeting, 23 June 2015, (10228/15) p.17.

<sup>6</sup> 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](http://europa.eu/rapid/press-release_IP-15-6321_en.htm).

<sup>7</sup> Proposal for a Regulation 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.

<sup>8</sup> Proposal for a Directive 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) 10 final, 25.1.2012.

<sup>9</sup> Proposal for a Directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings, COM(2013) 821 final, 27.11.2013.

<sup>10</sup> Proposal for a Directive on procedural safeguards for children suspected or accused in criminal proceedings, COM(2013) 822 final, 27.11.2013.

<sup>11</sup> Directive 2012/29/EU 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, 25.10.2012, p.57.

Furthermore, the **Directive on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries**<sup>12</sup> 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, and of the right to respect for private and family life as recognised in Article 7 of the Charter.

In May 2015, the Commission presented a **European Agenda on Migration**,<sup>1314</sup> outlining urgent measures to better manage migration at EU level. It proposed to develop President Juncker's political guidelines based around four comprehensive pillars:

1. reducing incentives for irregular migration;
2. border management — saving lives and securing external borders;
3. fulfilling Europe's duty to protect through a strong common asylum policy; and
4. developing a new policy on legal migration.

Specific focus was given to urgent action to prevent deaths at sea. This included a proposal for an EU-wide resettlement scheme across all Member States to offer 20 000 places to displaced persons in clear need of international protection in Europe<sup>15</sup> and, more recently, a proposal for a voluntary humanitarian admission scheme with Turkey.<sup>16</sup>

The proposed policy initiatives are directly relevant for the protection and promotion of fundamental rights. For example, for returns, the Commission published a **Return Handbook**<sup>17</sup> to support the September 2015 **Action Plan on Return**.<sup>18</sup> The handbook provides guidance for national authorities including on how to ensure that any return operation fully complies with fundamental rights, especially for unaccompanied children.

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<sup>12</sup>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.

<sup>13</sup> A European Agenda on Migration, COM(2015) 240 final, 13.5.2015.

<sup>14</sup> This report covers main 2015 developments. A snapshot of the overall progress in implementing the European Agenda on Migration and the latest proposals can be found at the website [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/index_en.htm) Informative fact sheets can be found at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/index_en.htm)

<sup>15</sup> Commission recommendation on a European resettlement scheme, C(2015) 3560 final, 8.6.2015.

<sup>16</sup> Commission recommendation for a voluntary humanitarian admission scheme with Turkey, C(2015) 9490, 15.12.2015.

<sup>17</sup> 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.

<sup>18</sup> EU Action Plan on return, COM(2015) 453 final, 9.9.2015.

As one immediate action to help frontline Member States facing disproportionate migratory pressures at the EU's external borders, the Commission proposed to develop a **'hotspot approach'**. Hotspots can help Member States to better secure fundamental rights safeguards in practice, if efforts are shared to ensure that sufficient resources and staff are in place. Since the Western Balkans Leaders' meeting in October 2015, the Commission has been closely following developments along the Western Balkans route. In the Leaders' Statement, Greece and the Western Balkan countries committed to increase their reception capacities to enable better and more predictable management of migration flows. To this end, the Commission has granted both emergency and humanitarian assistance.

The December 2015 proposal for a **Regulation establishing a European Border and Coast Guard** ('the Agency')<sup>19</sup> is also significant for safeguarding fundamental rights. It foresees the adoption of a code of conduct applicable to all border control operations coordinated by the Agency and of a code of conduct for return. A fundamental rights officer monitors the Agency's respect of fundamental rights and a complaint mechanism would deal with any violations of fundamental rights during operational activities. Joint operations or rapid border interventions could be suspended or stopped in the case of any breach of fundamental rights or international protection obligations. The Agency is to draw up a fundamental rights strategy with specific focus on children, victims of human trafficking, people in need of medical assistance or of international protection, people in distress at sea, and others in a vulnerable situation. The common core curricula for the Agency's border guard training would support compliance with the Charter.

Full compliance with fundamental rights is one of five guiding principles of the **European Agenda on Security**.<sup>20</sup> It highlights that security and respect for fundamental rights are not conflicting aims, but complementary policy objectives. Ensuring security is an essential prerequisite for the protection and free exercise of fundamental rights. At the same time, all security measures must respect fundamental rights and the rule of law, and comply with the principles of necessity, proportionality and legality, with appropriate safeguards to ensure accountability and judicial redress. The Commission's counter-terrorism proposals — following the Paris attacks in November 2015 — reflect this approach. The proposed **Directive on Terrorism**<sup>21</sup> highlights the importance of respecting fundamental rights in transposing criminal law provisions into national law. It protects the fundamental rights of victims and potential victims. It criminalises 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

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<sup>19</sup> Proposal for a Regulation 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 final, 15.12.2015.

<sup>20</sup> The European Agenda for Security, COM(2015) 185 final, 28.4.2015.

<sup>21</sup> Proposal for a Directive on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism, COM(2015) 625 final, 2.12.2015.

strictly necessary, thus upholding the principles of legality and proportionality of criminal offences and penalties (Article 49 of the Charter).

The importance of fundamental rights in security action is reflected in the prominence given to preventive actions in the context of counter-terrorism policies. The EU response to extremism must not lead to stigmatisation of any group or community, but rather draw on common European values of tolerance, diversity and mutual respect. The Agenda on Security seeks to **address the root causes of extremism** through education, youth participation, interfaith and intercultural dialogue, and employment and social inclusion. It emphasises the importance of combating discrimination, racism and xenophobia, and highlights the EU's key actions in this field.

This was also reflected in the "Declaration on promoting citizenship and the common values of freedom, tolerance and non-discrimination through education" (Paris Declaration)<sup>22</sup>, following the informal meeting of EU Education Ministers on 17 March in Paris, which provides a set of recommendations on the important role of education in promoting fundamental values such as active citizenship, mutual respect, diversity, equality and social inclusion, and in preventing violent extremism. As a follow-up to the Paris Declaration, the Commission and the Member States agreed on a set of new priority areas for cooperation at EU level until 2020.<sup>23</sup>

Finally, on 19 October 2015 the Commission hosted the High-level Ministerial Conference "Criminal justice response to radicalisation", to exchange experiences on preventing radicalisation in prisons and rehabilitation programmes for foreign fighters and returnees. The joint commitment of the Member States to act in this area was confirmed in the Council Conclusions on "enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism" of 20 November 2015.<sup>24</sup>

### ***2.3. Mainstreaming the Charter in international agreements and ensuring consistency in human rights***

Article 21 of the Treaty on European Union guides the EU's external action.

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<sup>22</sup> [http://ec.europa.eu/education/news/2015/documents/citizenship-education-declaration\\_en.pdf](http://ec.europa.eu/education/news/2015/documents/citizenship-education-declaration_en.pdf)

<sup>23</sup> In the joint 2015 Report on the progress in the implementation of the Education and Training 2020 Strategic Framework for European cooperation in education and training (ET2020), available at [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](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)

<sup>24</sup> [http://www.consilium.europa.eu/en/press/press-releases/2015/11/20-conclusions-radicalisation/?utm\\_source=dsms-auto&utm\\_medium=email&utm\\_campaign=Conclusions%20of%20the%20Council%20of%20the%20European%20Union%20and%20of%20the%20Member%20States%20meeting%20within%20the%20Council%20on%20enhancing%20the%20criminal%20justice%20response%20to%20radicalisation%20leading%20to%20terrorism%20and%20violent%20extremism](http://www.consilium.europa.eu/en/press/press-releases/2015/11/20-conclusions-radicalisation/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Conclusions%20of%20the%20Council%20of%20the%20European%20Union%20and%20of%20the%20Member%20States%20meeting%20within%20the%20Council%20on%20enhancing%20the%20criminal%20justice%20response%20to%20radicalisation%20leading%20to%20terrorism%20and%20violent%20extremism)

In response to the April 2015 Joint Communication ‘Keeping Human Rights at the heart of the EU agenda’,<sup>25</sup> the Council adopted, in July, the **EU Action Plan on Human Rights and Democracy (2015–2019)**. It lists more than 100 actions on human rights and democracy under 34 items.<sup>26</sup> Giving effect to Article 21, the action plan implements commitments in the Strategic Framework on Human Rights and Democracy<sup>27</sup> and provides leverage for the engagement of all EU authorities and stakeholders and improved mainstreaming of human rights’ considerations in all EU external policies. Planned actions include addressing human rights concerns in the impact assessment of policies that could have a significant impact in non-EU countries. The action plan sets out actions linked to the Commission’s work on internal fundamental rights compliance, in particular on privacy in the context of risks of mass surveillance, judicial reform, children’s rights, gender equality, the fight against racism and xenophobia, migration and counter-terrorism.

The Commission's October 2015 **‘Trade for All’ strategy** sets out steps to ensure that fundamental rights are respected in the EU and in non-EU countries.<sup>28</sup> It covers the right to regulate, and the assessment of impacts on fundamental and human rights of trade policies and agreements. It links trade policy with advancing human rights in non-EU countries, in particular for child labour, forced prison labour, and forced labour as a result of human trafficking and land grabbing. Human rights considerations are increasingly being incorporated into EU bilateral free trade agreements and into EU export controls policy.

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. 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 — will be able to obtain redress in US courts.<sup>29</sup> It constitutes a significant improvement of the situation concerning judicial redress in the US.

In August 2015, the EU held a dialogue with the UN Committee on the Rights of Persons with Disabilities for the first time ever over the implementation by the EU of the UN Convention on the Rights of Persons with Disabilities (UNCRPD).<sup>30</sup> The EU was represented by the Commission, as

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<sup>25</sup> JOIN (2015) 16 final, 28/04.

<sup>26</sup> <http://www.consilium.europa.eu/en/press/press-releases/2015/07/20-fac-human-rights/>.

<sup>27</sup> Council Document of 25 June 2012, ST 11855/12.

<sup>28</sup> Trade for all — Towards a more responsible trade and investment policy, 14.10.2015, COM(2015) 497 final.

<sup>29</sup> 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. These rights can be granted to citizens of any country, based on criteria defined in the aforementioned Act.

<sup>30</sup> The Committee holds regular dialogues with the State Parties of the Convention based on their national (or EU) reports once every few years. •The European Commission submitted the first EU Report in 2014. See <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/232/64/PDF/G1423264.pdf?OpenElement> The EU should submit the next combined second and third periodic report in 2021.



focal point for the EU under the Convention. The related UNCRPD Committee adopted the Concluding Observations in October 2015 and the Commission stated its commitment to implement them.

In July 2015, the Commission adopted — as part of Better Regulation — **Guidelines on the analysis of human rights impacts in trade-related impact assessments**.<sup>31</sup> These will facilitate analysis of the impacts of trade policy initiatives on human rights in both the EU and partner countries. The Better Regulation Agenda also foresees impact assessment on human rights for proposals with an external dimension in general.

## ***2.4 Court of Justice scrutiny of EU institutions***

In the *Schrems* case<sup>32</sup>, the CJEU declared the Commission's 2000 Safe Harbour Decision<sup>33</sup> invalid. That decision was an adequacy decision under Article 25(6) of the Data Protection Directive.<sup>34</sup> It had authorised transfer of personal data to a non-EU country, in this case the US. It had found an acceptable level of protection by reason of domestic law or US international commitments. The transfer of personal data to servers in the US by Facebook's Irish subsidiary, authorised by this adequacy finding, was challenged before an Irish court, in particular because of revelations on mass surveillance in 2013 by US intelligence authorities.

The Court held that an adequacy decision was conditional on a Commission finding that — in the non-EU country concerned — there is a level of protection of personal data that, while not necessarily identical, is 'essentially equivalent' to that guaranteed in the EU by virtue of the Directive, as read in the light of the Charter. The Court held that the 2000 Safe Harbour Decision did not contain sufficient findings by the Commission on limits of access by US public authorities to data transferred under the decision, and on the existence of effective legal protection against such interference. The Court ruled that legislation giving public authorities general access to the content of electronic communications must be regarded as compromising the essence of the fundamental right to respect for private life. The Court's judgment provided extra justification for the Commission's approach since November 2013 in reviewing the safe harbour arrangements: the Commission seeks to ensure the data protection required by EU law. In November 2015, the Commission issued guidance<sup>35</sup> on the possibilities of data transfer

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<sup>31</sup> <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1344>.

<sup>32</sup> C-362/14.

<sup>33</sup> Commission Decision 2000/520/EC of 26 July 2000 pursuant to Directive 95/46/EC on the adequacy of the protection provided by the safe harbour privacy principles and related frequently asked questions issued by the US Department of Commerce.

<sup>34</sup> 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.

<sup>35</sup> COM(2015) 566 final.

in light of the *Schrems* ruling, setting out alternative systems for transfers of personal data to the US until a new framework is put in place.<sup>36</sup>

## ***2.5 European Convention on Human Rights***

The Commission remains committed to EU accession to the Convention. This will strengthen fundamental values, improve the effectiveness of EU law and extend the consistency of fundamental rights protection in Europe. The opinion of the Court of Justice of December 2014, by which the Court has 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, 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.

## **3. Charter application in and by Member States**

Under scrutiny of the Court of Justice, the Commission oversees Member State compliance with the Charter when implementing EU law. In the case of a breach, it can start infringement proceedings. National judges also apply the Charter to ensure compliance with fundamental rights by Member States. Where a national court has doubts as to the Charter's applicability or the correct interpretation of its provisions, it can — and, in the case of a national court of last instance, must — refer to the Court of Justice for a preliminary ruling. This helps to develop Charter-related case law and strengthens the role of national judges in upholding it. In 2015, national judges made 36 referrals for a preliminary ruling.<sup>37</sup>

### ***3.1 Infringement procedures***

Since the Charter is addressed to Member States only when implementing Union law, infringement procedures concerning the Charter can only be initiated when a sufficient link to EU law — triggering the Charter's applicability — has been established.

A 2015 example of relevant infringement procedures relates to **ensuring the right to a fair trial in the implementation of the Asylum Procedures Directive**.

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<sup>36</sup> 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.

<sup>37</sup> 27 references referring to the Charter were introduced at the CJEU in 2011, 41 in 2012 and 2013, and 43 in 2014. See annex II 'Overview of the applications for preliminary rulings submitted in 2015 which refer to the Charter' in the Staff Working Document.

Following up on the second implementation package of the European Agenda on Migration, the Commission stepped up its efforts to ensure full application of EU law for migration and asylum. Between September and December 2015, it adopted 49 infringement decisions against Member States for inadequate implementation of legislation making up the Common European Asylum System. These included an infringement case against Hungary following changes in its asylum legislation.<sup>38</sup> Grievances related to the right to an effective remedy set down in Article 46 of the Asylum Procedures Directive as read together with Article 47 of the Charter, in particular in view of the restricted scope and effectiveness of appeals procedures and the potential lack of judicial independence. Hungary was formally notified on 10 December 2015. The Commission has requested additional clarification on other outstanding issues and will continue to liaise with the Hungarian authorities.

In September 2015, the Commission issued a complementary letter of formal notice to Greece on reception capacities for applicants for international protection and failure to put in place arrangements to guarantee acceptable living conditions and treatment of unaccompanied children.

A further case was launched, in April 2015, against a Member State for discrimination of Roma children in education. This violates the Racial Equality Directive<sup>39</sup> and Article 21 of the Charter, which prohibits discrimination based on race and ethnic origin.

### ***3.2 The Court of Justice giving guidance to Member States***

In 2015, the Court of Justice continued to give guidance — under the system of referrals for preliminary rulings — to national judges on Charter applicability and interpretation.

In its first case on Roma discrimination, *Chez Razpredelenie*,<sup>40</sup> the Court 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, given that in other districts such meters are installed at a normal height. The Court confirmed that the scope of the Race Equality Directive cannot be defined restrictively. This is because the Directive is an expression of the principle of equality, which is one of the general principles of EU law, as recognised in Article 21 of the Charter.

The Court again referred to Article 21 to find that the prohibition of discrimination on grounds of ethnic origin in the directive does not apply only to persons who have a certain ethnic origin. It also applies to those who, although not themselves a member of the ethnic group concerned, suffer, together with the former, less favourable treatment or a particular disadvantage on account of a

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<sup>38</sup> [http://europa.eu/rapid/press-release\\_IP-15-6228\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6228_en.htm).

<sup>39</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19/07/2000, p.22.

<sup>40</sup> C-83/14.

discriminatory measure. Finally, the Court referred to Article 21 to interpret the concept of direct discrimination based on race or ethnic origin.

In *Leger*,<sup>41</sup> the Court assessed a French decree that contraindicated blood donation by men who had had sexual relations with other men. The decree was responding to a high prevalence of HIV infection in this group of potential donors and the high risk of acquiring severe infectious diseases transmissible by blood. The Court stated that, as the decree applied Directive 2004/33 regarding requirements for blood and blood components,<sup>42</sup> the Charter was applicable. It ruled that the contraindication based on sexual orientation constituted a limitation of the right to non-discrimination under Article 21(1) of the Charter. Under Article 52(1) of the Charter, limitations are justifiable if there is a genuine objective of general interest recognised by the EU. This can include the aim of minimising the high risk of transmitting an infectious disease to recipients of blood transfusions. Nevertheless, the Court stated that the proportionality requirement would only be met if there were no effective techniques for detecting such infectious diseases or — in the absence of such techniques — if there were no methods less onerous than a contraindication that would ensure a high level of health protection for recipients.

### ***3.3. National case law quoting the Charter***

National judges play a key role upholding fundamental rights and the rule of law. In 2015, the Fundamental Rights Agency<sup>43</sup> found that national courts continued referring to the Charter for guidance and inspiration, even in cases that fell outside the scope of EU law.

In December 2015<sup>44</sup>, Germany's Federal Constitutional Court held that, in individual cases, protection of fundamental rights can include the review of acts determined by Union law if this is indispensable to protect the constitutional identity guaranteed by Article 79 of Germany's Basic Law. Under the principle of individual guilt, rooted in the guarantee of human dignity set down in Article 1 of the Basic Law, a criminal sanction presupposes that the offence and the offender's guilt are proven in a way that complies with applicable procedural rules. The Constitutional Court held that, under Union law, a European arrest warrant cannot be executed if it does not meet the requirements stipulated by the Framework Decision<sup>45</sup>, or if the extradition would entail a violation of Union fundamental rights. It concluded that, in the specific case, there was no need to restrict the precedence of Union law by applying the standards of German law. This is because the Framework Decision requires an

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<sup>41</sup> C-528/13.

<sup>42</sup> 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 91, 30.3.2004, p. 25.

<sup>43</sup> FRA 2015 Annual Report, to be published in May 2016.

<sup>44</sup> BVerfG, Beschluss des Zweiten Senats vom 15. Dezember 2015 - 2 BvR 2735/14.

<sup>45</sup> 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190, 18.07.2002, p. 1.

interpretation that takes into account guarantees of the accused's rights required by Article 1 of the Basic Law in the context of an extradition.

### ***3.4. Charter awareness raising***

The 2015 Eurobarometer survey on awareness of the Charter<sup>46</sup> showed that interest in information about the rights people enjoy under the Charter remains high. Over 60% of respondents would like more information about the content of the Charter, where to turn if their rights are violated, and when the Charter applies and when it does not.

To raise Charter awareness among practitioners, the Latvian Presidency hosted a conference in Riga in April 2015. The conference on the applicability of the Charter by Member States authorities in implementing EU law focused on the Charter's role in the EU legislative process.

## **4. Focus section: 2015 annual colloquium — outcomes and next steps**

On taking office, First Vice-President Timmermans committed to organise an annual colloquium on the state of play of fundamental rights in the EU. The aim is to improve mutual cooperation and political engagement for the promotion and protection of fundamental rights.

The first colloquium was held in Brussels in October 2015 and focused on 'Tolerance and respect: preventing and combating Antisemitic and anti-Muslim hatred in Europe'. This was the first EU-level meeting of representatives from Muslim and Jewish communities to discuss how to combat Antisemitic and anti-Muslim hatred. Some 300 participants attended: local, national and EU policymakers, international and civil society organisations, religious and community leaders, equality bodies, representatives from the worlds of education, work and media, and academics and philosophers from across the EU. They examined the reasons behind the surge in Antisemitic and anti-Muslim incidents in Europe, identified ways to address the trends, and agreed to join forces to encourage a culture of inclusive tolerance and respect.

The colloquium<sup>47</sup> identified key actions to prevent and combat Antisemitic and anti-Muslim hatred, including the appointment of two coordinators — one to combat Antisemitism and one to combat anti-Muslim hatred — to coordinate and strengthen policy responses to address these threats.<sup>48</sup>

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<sup>46</sup> [http://ec.europa.eu/public\\_opinion/archives/flash\\_arch\\_420\\_405\\_en.htm](http://ec.europa.eu/public_opinion/archives/flash_arch_420_405_en.htm).

<sup>47</sup> Conclusions paper, Joining forces against anti-Semitic and anti-Muslim hatred in the EU: outcomes of the first Annual Colloquium on Fundamental Rights: [http://ec.europa.eu/justice/events/colloquium-fundamental-rights-2015/files/fundamental\\_rights\\_colloquium\\_conclusions\\_en.pdf](http://ec.europa.eu/justice/events/colloquium-fundamental-rights-2015/files/fundamental_rights_colloquium_conclusions_en.pdf).

<sup>48</sup> [http://ec.europa.eu/justice/newsroom/fundamental-rights/news/151201\\_en.htm](http://ec.europa.eu/justice/newsroom/fundamental-rights/news/151201_en.htm).

Important steps were taken to combat hate speech online. The Commission initiated an EU-level dialogue with major IT companies in cooperation with Member States to see how intermediaries and other bodies can help tackle online hate speech that incites violence.

In 2015, the Commission continued to monitor EU rules on combating racism and xenophobia<sup>49</sup> to ensure a full and correct application. Four Member States changed their criminal rules to align them with EU law. The Commission chairs a Member States' expert group, which, in 2016, will become the EU High-level group on racism, xenophobia and other forms of intolerance. It will be a platform for best practice guidance and strengthened cooperation, open to civil society and community representatives, the Fundamental Rights Agency and relevant international organisations.

In 2015, EUR 5.4 million was made available under the Rights, Equality and Citizenship Programme to national authorities and civil society. The funding is for training and capacity building, exchange of best practice to prevent and combat racism and xenophobia, strengthening criminal responses to hate crime and hate speech, and empowering and supporting victims.

In 2015, the Erasmus+ Programme allocated funding to implement actions identified in the colloquium<sup>50</sup> and to empower all those involved at local level to build a culture of tolerance and respect and to overcome prejudices.

While EU institutions and bodies can accompany and support progress on the ground, the prevention and combating of racism and xenophobia is primarily a local endeavour and requires full ownership both of the communities concerned and of society at large.

## **5. Conclusion**

The Commission is committed to a high level of protection of fundamental rights in the EU. It seeks to ensure that all legislative proposals and actions are fully compatible with the Charter.

The Commission intends to improve cooperation with other EU institutions and agencies, notably the Fundamental Rights Agency, and with the Council of Europe to ensure that fundamental rights are given priority.

The Commission intends to promote awareness of common EU values and, in particular, of the Charter through targeted funding and training, dialogue with civil society and practical tools to encourage dialogue between Courts in Member States.

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<sup>49</sup> 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.

<sup>50</sup> See key actions under Section 1 of the conclusions of the Colloquium.