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**COMMISSION STAFF WORKING DOCUMENT**

**on the Application of the EU Charter of Fundamental Rights in 2011**

*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**

**2011 Report on the application of the EU Charter of Fundamental Rights**

{COM(2012) 169 final}  
{SWD(2012) 85 final}

## INTRODUCTION

After the entry into force of the [EU Charter of Fundamental Rights](#)<sup>1</sup>, the Commission adopted a [Strategy on the effective implementation of the Charter](#)<sup>2</sup> setting as an objective that the EU is exemplary 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. This Report covers the year 2011 and informs the public on 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 reports aim 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 as well as on the analysis of letters from the general public and questions and petitions from the European Parliament. The Member States are bound by the Charter when they implement EU law. However, there is not yet enough information on the efforts made to ensure the effective implementation of the Charter. The Commission will seek in its forthcoming Annual Reports on the Application of the Charter to document progress in that respect.

### 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 **Court of Justice of the European Union**. 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 Court of Justice. 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 Court of Justice of the European Union, which, subject to certain conditions, has the power to annul such act.

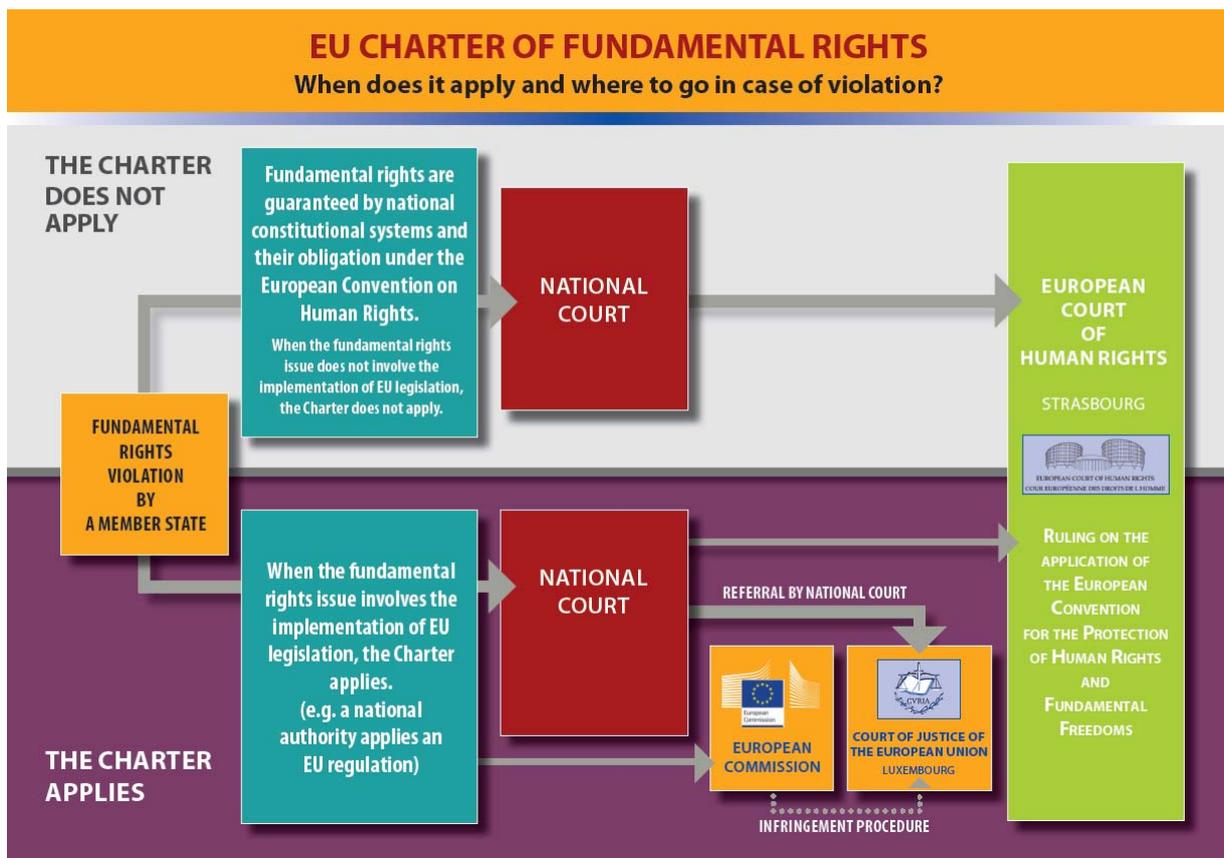
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<sup>1</sup> Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF>

<sup>2</sup> Available at: [http://ec.europa.eu/justice/news/intro/doc/com\\_2010\\_573\\_en.pdf](http://ec.europa.eu/justice/news/intro/doc/com_2010_573_en.pdf)

**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.

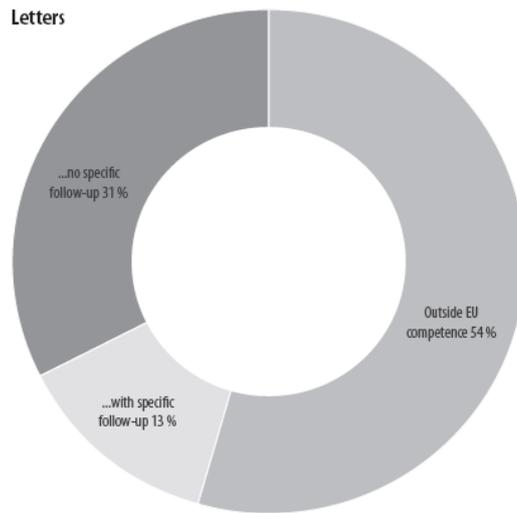
In addition, all EU countries have made commitments under **the European Convention on Human Rights (ECHR)**, independently of their obligations under EU law. Therefore, as a last resort and after having exhausted all legal remedies available at national level, individuals may bring an action before 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 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 Court<sup>3</sup>.



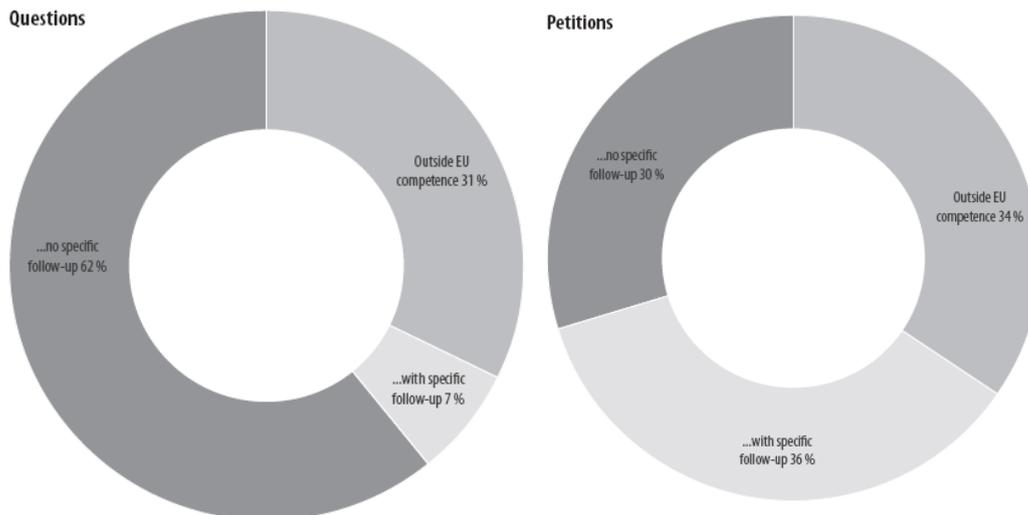
### Overview of the letters and questions to the Commission on fundamental rights

Among the **letters from the general public** on fundamental rights issues received by the Commission in 2011, 45% 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 European Court of Human Rights in Strasbourg. Where possible, complainants were redirected to other bodies for more information (such as national data protection authorities).

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



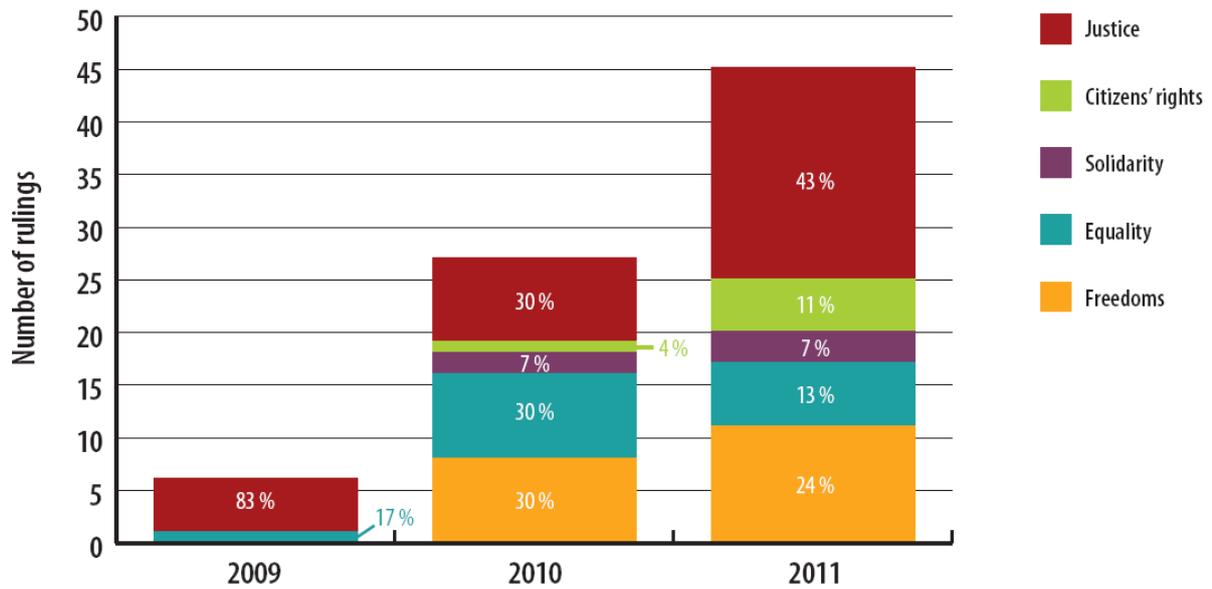
Among the **questions and petitions from the European Parliament** approximately 70% concerned issues within EU competence. In a number of cases, the Commission contacted the Member States to obtain clarifications on alleged violations. The replies given by the Commission explained or clarified the relevant policies and ongoing initiatives.



### Overview of the decisions of the Court of Justice of the European Union referring to Charter

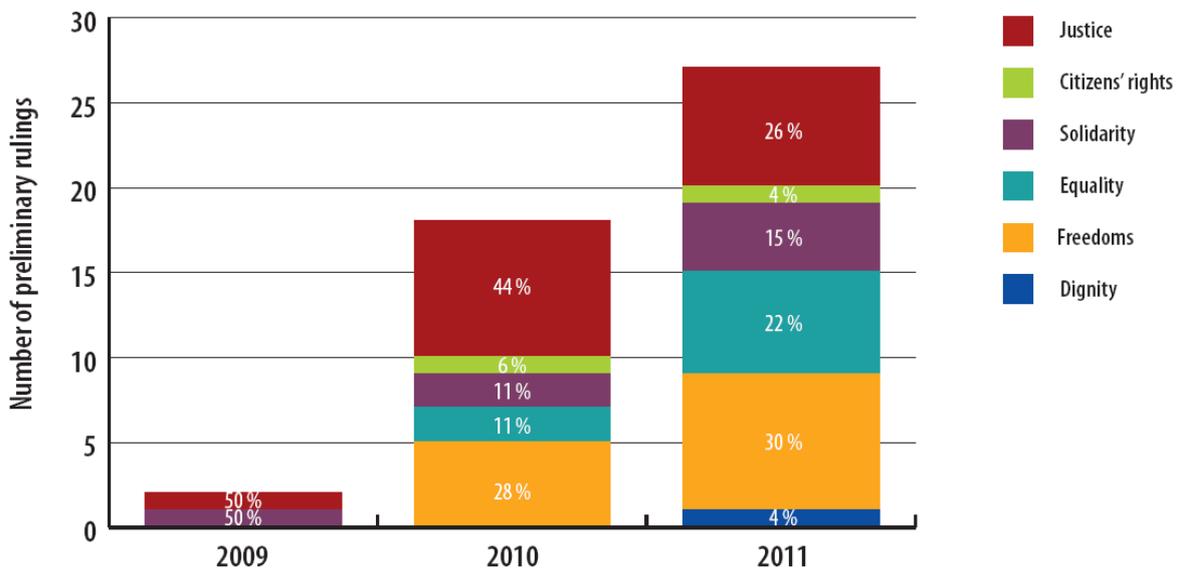
The **Court of Justice of the European Union** has increasingly referred to the Charter in its decisions (see Annex I for an overview of all relevant rulings): the number of decisions quoting the Charter in its reasoning rose by more than 50% as compared to 2010, from 27 to 42.

### Overview of ECJ case-law which quotes the Charter of mentions it in its reasoning



National courts when addressing questions to the Court of Justice (preliminary rulings) have also increasingly referred to the Charter: in 2011, such references rose by 50% as compared to 2010, from 18 to 27.

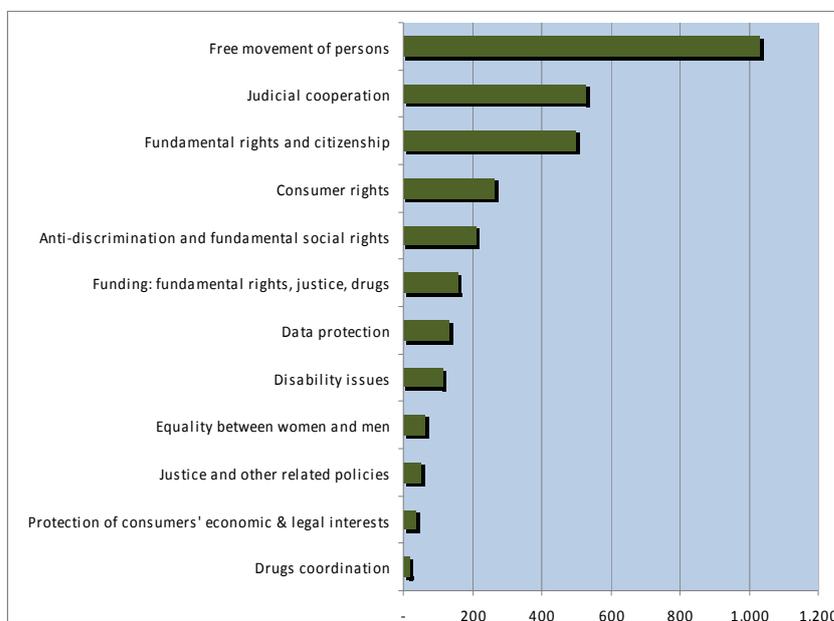
### Requests for preliminary rulings by the ECJ which mention the Charter



## 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. For the last 6 months of 2011, the EDCC replied to 3107 enquiries from citizens on topics such as free movement of persons and judicial cooperation.

Enquiries received by the Europe Direct Contact Centres  
on justice, fundamental rights and citizenship July – December 2011)



## The structure of the Report

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

- Examples of how the EU institutions and, where relevant, the Member States have applied the Charter in 2011;
- Questions and petitions from the European Parliament, and letters from the general public received in 2011 focusing on fundamental rights issues;
- Relevant case-law of the Court of Justice of the European Union;
- Data gathered by the EU Agency for Fundamental Rights throughout 2011.

# 1. Dignity

*Human dignity*

*Right to life*

*Right to the integrity of the person*

*Prohibition of torture and inhuman or degrading treatment or punishment*

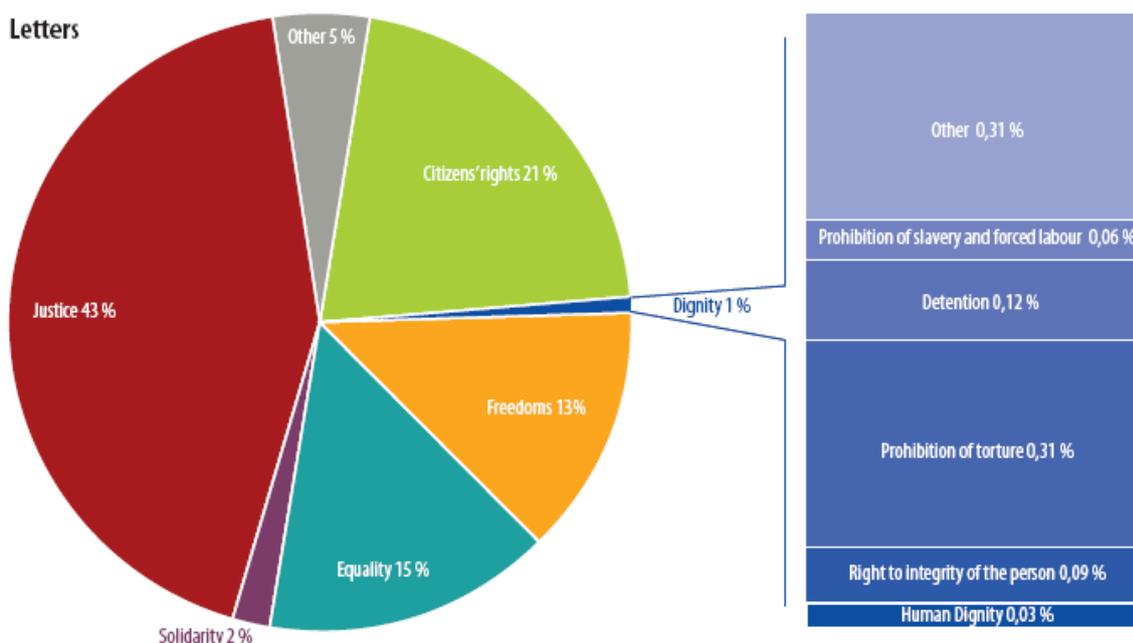
*Prohibition of slavery and forced labour*

- Member States wishing to deploy **security scanners** must comply with minimum conditions set by the new EU rules to safeguard fundamental rights. 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.
- The Commission proposed to strengthen the protection of fundamental rights in the **EU rules on border control**, which provide common standards and procedures on controls and surveillance at the external borders of the Schengen area.
- The EU adopted new rules on **preventing and combating trafficking in human beings and protecting its victims**. These rules seek to achieve more effective prosecution by national authorities of human traffickers across borders.
- The Court of Justice of the European Union issued a ruling on the **application of EU rules on patents in the area of biomedicine**. The Court considered that researchers cannot declare patents on inventions which imply the destruction of any human cell having the potential of developing into human being, including in the case when human cells are created via therapeutic cloning.
- The Court of Justice of the European Union clarified the **conditions for the transfer of asylum seekers in the application of the EU Dublin Regulation**. The Court forbid the transfer of asylum seekers to Member States where there are systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers which would amount to a real risk of the asylum seeker being subject to inhuman or degrading treatment as enshrined in Article 4 of the Charter

## Human dignity

Human dignity is the basis of all fundamental rights. It guarantees the protection of human persons from being treated as a mere object 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.

The European Union strongly opposes the death penalty and has consistently backed its universal abolition, and continues to work towards this goal. In 2011, **the Commission amended<sup>4</sup> existing EU rules on trade in certain goods which could be used for capital punishment or torture** by imposing export control on certain chemicals which could be used for capital punishment (e.g. sodium thiopental, and other short and intermediate acting barbiturates), by broadening the ban on trade in electric-shock devices (such as electric shock sleeves and cuffs) which have the same impact as electric-shock belts and by imposing an export ban on spiked batons. The Commission has also provided guidance<sup>5</sup> on the application of EU rules regarding the control of exports to all third countries of chemicals of listed barbiturates (or medicinal products).



Guaranteeing the security of travellers in the field of aviation security includes the use of new technologies that can detect unsafe objects at airports, such as security scanners. Some technologies of security scanners can reveal a detailed display of the human body, including possible medical conditions, and could violate the right to the respect of human dignity which requires that people are treated as subjects and not as objects. The **EU adopted new rules** on the use of security scanners<sup>6</sup> **providing an optional use at EU airports of security scanners** that do not use X-ray radiation for screening passengers. The different preparation phases in the adoption of the legislation took into account the impact of different policy options on fundamental rights, in particular on human dignity,

<sup>4</sup> Commission implementing regulation (EU) No 1352/2011 of 20 December 2011 amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, OJ L 338, 21.12.2011, p. 31-34.

<sup>5</sup> Staff Working Paper, SEC(2011)1624

<sup>6</sup> Commission Regulation 1141/2011 supplementing the common basic standards on civil aviation security as regards the use of security scanners at EU airports, OJ L 293, 11.11.2011, p. 22-23; and Commission Implementing Regulation N 1147/2011 implementing the common basic standards on civil aviation security as regards the use of security scanners at EU airports, OJ L 294, 12.11.2011, p. 7-11.

private and family life, data protection, the rights of the child, freedom of religion and the prohibition of discrimination. Adopted EU rules reflect this preparatory work and contain safeguards that ensure the legislation is in compliance with the Charter. For example, passengers are entitled to opt out from a security scanner procedure and to be checked by alternative screening methods. In addition, detailed conditions are laid down to ensure that the right to the protection of personal data and private life is respected, for instance, the obligation that security scanners shall not store, retain, copy, print or retrieve images. As far as health considerations are concerned, only scanners that do not use ionising radiation are allowed as a method for screening persons.

#### **The entitlement of passengers to opt out from a security scanner procedure**

Member States and airports wishing to deploy security scanners must comply with minimum conditions set by the EU's new rules to safeguard fundamental rights. 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.

The **Court of Justice of the European Union** referred to human dignity in a **case concerning the patentability of human embryos** created through therapeutic cloning.<sup>7</sup> The Court has pointed out that relevant EU rules emphasise that patent law must be applied so as to respect the fundamental principles safeguarding the dignity and integrity of the person and established EU legislation intended to exclude any possibility of patentability where respect for human dignity could thereby be affected. The Court considered that researchers cannot declare patents on inventions which imply the destruction of any human cell having the potential of developing into human being, including in the case when human cells are created via therapeutic cloning. The Court further specified that researchers cannot declare patents on the use of human embryos for research purposes. This means the researcher cannot ask for a patent on a research method which requires the use of embryos.

The Commission proposed a legal framework for the **research funding programme Horizon 2020**. When preparing its proposal, the Commission paid particular attention to the aspects relating to biomedical research with the use of embryonic stem cells in order to ensure the compliance of the funding programme with the Charter. The Commission submitted its legislative proposal only after making sure that it did not raise concerns from the perspective of the principle of the respect of human dignity (Article 1 of the Charter) and the right to integrity of the person (Article 3 of the Charter). The proposed programme will not finance any research intended to create embryos for the purpose of embryonic stem cell procurement. The proposed programme allows the financing of embryonic stem cells research on the condition of an ethical review and checks and only in Member states, where such research is allowed by law and where the legislation establishes appropriate mechanisms of evaluation, control and licensing.

### **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.

This provision is particularly relevant in the context of implementing **EU rules on border control**, which provide common standards and procedures for controls and surveillance at the external borders of the Schengen area<sup>8</sup>. These rules guarantee respect for the fundamental rights of all travellers. In particular, the **Schengen Borders Code**<sup>9</sup>, which lays down Member States' obligations concerning external border management, provides that border guards must fully respect human dignity, should act in a proportionate manner and should not discriminate against travellers on

<sup>7</sup> ECJ, C-34/10, *Brüstle v. Greenpeace*, 18.10.2011.

<sup>8</sup> The Schengen area is an area within the EU without border controls. It includes the territories of the Member States that have decided to abolish border controls between them. External borders are borders between the Member States that have joined the Schengen area and non-Schengen Member States or third countries.

<sup>9</sup> Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 105, 13.4.2006.

grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Schengen Border Code also specifies that border guards should be properly trained professionals. In 2011, the Commission proposed amendments<sup>10</sup> that further strengthen the protection of fundamental rights by requiring training on the protection of unaccompanied minors and victims of trafficking. The proposal provides third country nationals with full access to international protection in accordance with EU law at joint border crossing points between Member States and neighbouring third countries, operated through bilateral agreements.

The EU borders agency (FRONTEX) plays a key role in coordinating the actions of Member States. In 2011, the EU **amended the rules governing FRONTEX**. The amendments require that all persons participating in border control activities undertake training in fundamental rights, that any incidents during operations, including in relation to fundamental rights, must be reported to the national authorities and followed up, and that FRONTEX develop detailed guidelines on how to treat third-country nationals who are being returned to their home country (building on the best practice guidelines already in place). The tasks of FRONTEX have also been revised, and now include possible assistance to Member States in situations that may involve humanitarian emergencies and rescue at sea. The office of a Fundamental Rights Officer will be created in the Agency to assist in matters having implications for fundamental rights. A code of conduct will set out the fundamental rights standards to be respected during FRONTEX operations, and a Consultative Forum on Fundamental Rights will be created involving relevant international organisations and non-governmental organisations. The amendments provide that the Member State hosting a FRONTEX-coordinated operation must provide for appropriate disciplinary or other measures in a case of fundamental rights violations during the course of a joint operation. FRONTEX operations must be suspended or terminated if such violations are of a serious nature or are likely to persist.

The Commission proposed setting up a **European border surveillance system (EUROSUR)**.<sup>11</sup> The aim of EUROSUR is to reinforce control of Schengen external borders, particularly at the southern maritime and eastern land borders, in order to bring down the number of irregular migrants entering the EU undetected, reduce the loss of lives of migrants at sea and prevent cross-border crime. It aims to do so by allowing national authorities in charge of border surveillance (border guards, coast guards, police, customs and navies) to share and exchange operational information and cooperate with each other, with Frontex and with neighbouring third countries. The proposal guarantees that whenever data sharing includes personal data, the data protection rules apply and must be fully respected. The proposal also explicitly prohibits any exchange of data with a third country who could use this information to identify persons or groups of persons who are under a serious risk of being subjected to torture, inhuman and degrading treatment or punishment or any other violation of their fundamental rights.

The **Court of Justice of the European Union clarified the conditions for the transfer of asylum seekers in application of the EU Dublin Regulation**. In the ruling *N.S. and others*<sup>12</sup> the Court of Justice considered that Member States, including the national courts, must not transfer an asylum seeker to the Member State indicated as responsible where it is such that they cannot be unaware of systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers amounting to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment. When a transfer to the Member State responsible is impossible, the Member State where the applicant is present must examine whether another Member State can be identified as responsible for the examination of the asylum application or if necessary, examine the application itself.

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<sup>10</sup> Proposal for a Regulation amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and the Convention implementing the Schengen Agreement, 10.03.2011, COM 2011(118) final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0118:FIN:en:PDF>

<sup>11</sup> 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>

<sup>12</sup> ECJ joined cases C-411/10 and C-493/10, *N.S. v Secretary of State for the Home Department and M.E. e.a. v Refugee Applications Commissioner*, 21.12.2011.

This case clarifies certain issues within the framework of EU legislation that were raised by the **European Court of Human Rights** in the case *M.S.S. v Greece and Belgium*<sup>13</sup>. The applicant, an Afghan national, entered the European Union through Greece. The application for asylum lodged by the applicant in Belgium was not examined and the applicant was transferred to Greece pursuant to the Dublin Regulation. The Court found violations of Article 3 of the ECHR (prohibition of inhuman and degrading treatments) and Article 13 of the ECHR (effective remedy) both by Belgium and Greece, due to the structural failures of the asylum system in Greece (reception conditions, detention conditions, access to the asylum procedure) and the lack of access to effective remedy.

**Fundamental rights situation of persons irregularly entering the EU's external border between Greece and Turkey**

The **EU Agency for Fundamental Rights** reported on the fundamental rights situation of persons irregularly entering the EU's external border between Greece and Turkey, based on findings of a field study carried out January 2011<sup>14</sup>. The Agency's report stressed that conditions in detention centres raise serious concerns for the enjoyment of fundamental rights, including basic problems of over-crowding, and inadequate heating and sanitation facilities. The Agency further identified factors contributing to the current crisis, in particular, the practice of systematically detaining all those found crossing the border irregularly (including children), a lack of coordination in the Evros region, and the inadequate response to the humanitarian crisis, which would warrant the declaration of the state of emergency.

The findings of the Agency confirmed the **serious concerns expressed by the Commission on conditions in which irregular migrants and asylum seekers are being detained in Greece**, in particular in the Evros region, and the humanitarian situation in these places of detention. The Commission reiterated that third-country nationals held in detention for whatever reason should always be treated in a humane and dignified manner and in full respect of fundamental rights. The Commission already took a number of actions in that respect and intervened, by launching an infringement procedure against Greece in 2010, on the inappropriate reception conditions for asylum seekers detained in the Evros region.

The Commission is engaged in substantial efforts towards assisting Greece, together with the Member States, FRONTEX, EASO, UNHCR and other partners. This support combines significant financial and practical assistance for the reform of the national asylum system, border and return management, a more efficient use of the relevant EU funds for migration management and better cooperation with neighbouring countries, in particular Turkey.

## Prohibition of trafficking in human beings

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

The EU Directive on **prevention and combating trafficking in human beings and protecting its victims entered into force in 2011**<sup>15</sup>. The Directive takes a human rights and gender-specific approach. It seeks to achieve more effective prosecution by national authorities of human traffickers across borders. It establishes uniform definitions and common standards on sanctions, liability and jurisdiction. The definition of trafficking for the first time explicitly includes forms of exploitation like begging, criminal activities or removal of organs. The Member States must put in place mechanisms for the early identification of victims, as well as for the early provision of support

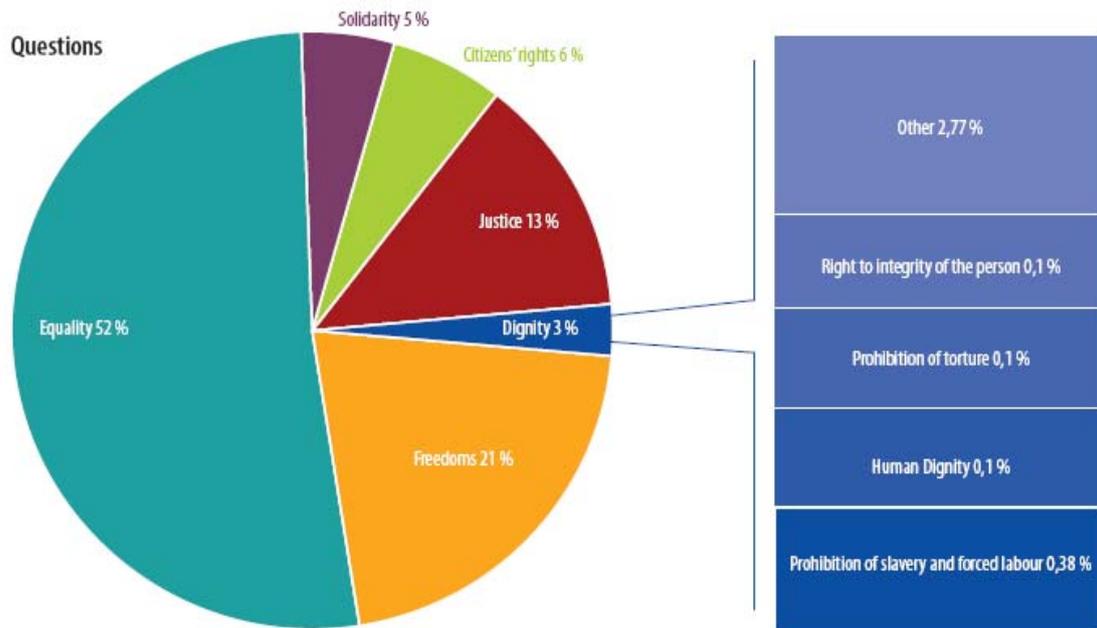
<sup>13</sup> ECtHR, *MSS v Belgium and Greece*, application no. 30696/09, 21.01.2011.

<sup>14</sup> EU Agency for Fundamental Rights Report, "*Detention of third-country nationals in return procedures*", November 2011, available at: [http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/pub\\_detention\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub_detention_en.htm)

<sup>15</sup> Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.04.2011, p. 1-11.

to victims. Victims would also receive free legal counselling and legal representation. Special protection measures are envisaged for child victims, e.g. to protect them from the negative effects of court procedures by defining how to conduct interviews with child victims, or by setting out the rules for extended support to unaccompanied children (see also the section on Rights of the child and the section on newly proposed rules on victims rights). When adopting laws on this issue, Member States must take into account the rights of defence of those accused in criminal procedures.

To further streamline EU actions in the field of trafficking in human beings, the Commission appointed an **EU Anti-trafficking Coordinator**. The Commission also launched a new **EU anti-trafficking website**<sup>16</sup>, which includes information on EU and national policy and legislation, Commission funded projects and publications.



<sup>16</sup> Available at: <http://ec.europa.eu/anti-trafficking>

## 2. Freedoms

*Right to liberty and security*

*Respect for private and family life*

*Protection of personal data*

*Right to marry and right to found a family*

*Freedom of thought, conscience and religion*

*Freedom of expression and information*

*Freedom of assembly and of association*

*Freedom of the arts and sciences*

*Right to education*

*Freedom to choose an occupation and right to engage in work*

*Freedom to conduct a business*

*Right to property*

*Right to asylum*

*Protection in the event of removal, expulsion or extradition*

- The Commission prepared a reform of the EU legal framework on **data protection**. Individuals continue to be concerned about keeping control of their personal data, not only in social networks but in many different areas of their daily life. Negotiations started with the United States on an agreement to protect personal data exchanged in the context of fighting crime and terrorism. The Commission applied the requirement to protect personal across a range of policies in the preparation of new legislative proposals.
- The **Common European Sales Law** proposed by the Commission would facilitate the exercise of the freedom to conduct a business by removing obstacles resulting from divergences between national contract laws.
- Citizens and Members of the European Parliament voiced concern over the **respect of freedom of expression and media freedom and pluralism**. The High Level Group on Media Freedom and Pluralism created by the Commission will draw recommendations for the respect, protection, support and promotion of pluralism and freedom of the media in Europe.

## Respect for private and family life

The Charter guarantees the right of everyone to the respect of their private and family life. EU free movement rules recognise the right to family life for all EU citizens who move and reside in another Member State as well as for third-country nationals who are member of the family of an EU citizen.

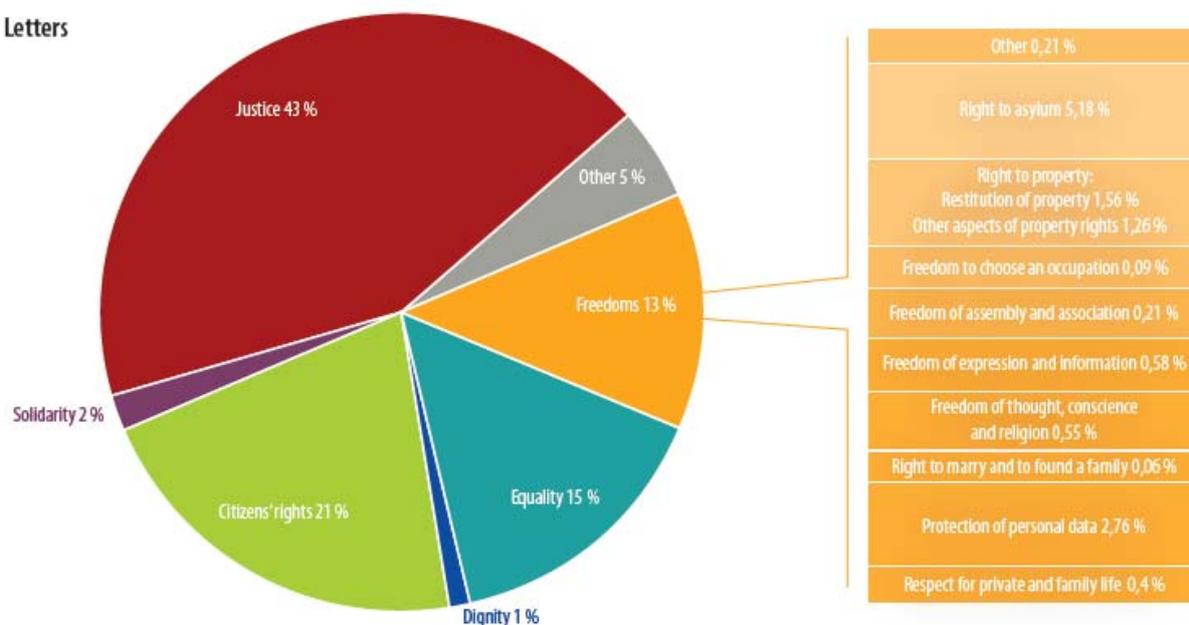
The Commission launched a **public debate on the right to family reunification of third-country nationals living in the EU**<sup>17</sup>. The outcome of this consultation will shape whether any concrete policy follow up is necessary (e.g. modification of the rules, interpretative guidelines or status quo).

The Commission proposed **new regulations on matrimonial property regimes and on property regimes for registered partnerships**<sup>18</sup>. The regulations take into account the right to respect for private and family life and the right to marry and to found a family according to national laws. There is no differentiation introduced in the legislation on the basis of sexual orientation.

### *German Youth Welfare Office (Jugendamt)*

In November 2011, the European Parliament's Petitions Committee carried out its second fact-finding visit to Germany to enquire about the functioning of the German Youth Welfare Office (*Jugendamt*). According to the complainants and petitioners the Welfare Office's decisions and interventions allegedly discriminate against non-German parents, for example, by obliging non-German parents to communicate with their children only in German during visits supervised by the Welfare Office. The findings of the fact-finding mission have not yet been made public.

### Letters



<sup>17</sup> Public consultation by the Commission on the right to family reunification, available at:

[http://ec.europa.eu/home-affairs/news/consulting\\_public/consulting\\_0023\\_en.htm](http://ec.europa.eu/home-affairs/news/consulting_public/consulting_0023_en.htm)

<sup>18</sup> Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships, COM(2011) 127/2, available at:

[http://ec.europa.eu/justice/policies/civil/docs/com\\_2011\\_127\\_en.pdf](http://ec.europa.eu/justice/policies/civil/docs/com_2011_127_en.pdf)

## Data protection

The **Charter guarantees the protection of personal information**. Everyone has the right to the protection of their personal data. Such data must be processed fairly for specified purposes and on a legitimate basis laid down by law. In the European Union, compliance with these rules is subject to control by independent authorities in Member States.

The Commission took concrete steps to update **EU rules on data protection** in 2012, based on the numerous replies it received during the consultation process carried out in 2011.

The **Court of Justice of the European Union** declared in its landmark **Scarlet ruling**<sup>19</sup> that obliging an internet service provider to install a filtering system such as the one at stake in order to prevent an infringement of intellectual property rights would infringe the freedom of the provider to conduct its business, as well as its customers' rights to the protection of their personal data and to receive or impart information. The contested filtering system would not respect the requirement that a fair balance be struck between the right to intellectual property, on the one hand, and the freedom to conduct business, the right to protection of personal data and the freedom to receive or impart information, on the other. In particular, concerning the protection of personal data such filtering system may infringe that right as it would involve a systematic analysis of all content and the collection and identification of users' IP addresses from which unlawful content on the network is sent; those addresses are protected personal data because they allow those users to be precisely identified. This ruling underlines the importance of taking into account *all* the fundamental rights involved by a given measure and to ensure its compliance with *all* these rights.

The **Court of Justice of the European Union** provided **guidance on the interpretation of the provision in EU law on the processing of data**<sup>20</sup>. The Court confirmed that the provision on the criteria which make data processing legitimate has direct effect before national courts. The Court further ruled that this provision provides an exhaustive list of legitimate legal basis for a processing activity upon which Member States cannot impose additional requirements.

Several data protection supervisory authorities in Member States concluded the investigations launched in 2010 into **social networking sites**. Many investigations had been triggered by complaints launched after the change of the privacy policies by social network providers. With these changes the social networking sites took the liberty of making broader use of the personal data it had collected under more restrictive policies. The social networking sites had not given users full information about the change, and had not obtained their consent. Furthermore, new features introduced in the meantime on one particular site caused new complaints and further investigations. This concerns a new function allowing the automatic identification of persons in photos uploaded to the site (facial recognition) and the use of cookies and web scripts to collect data about user behaviour, e.g. with the help of the so-called 'Like-Button', without the user's knowledge and control.

The Irish Data Protection Commissioner, who is the competent supervisory authority to monitor the application of EU data protection rules, **received a complaint against a social network from an Austrian non-governmental organisation which had prepared 22 elaborate charges on privacy violations**. The investigation also included on-site audits at the premises of the social network site in Ireland, the headquarters of the company managing the site. The Irish Data Protection Commissioner published its audit report on 22 December 2011. The report contains a number of observations and corresponding recommendations for improvements of the privacy policies and functions of the social network site in question. They concern for instance issues such as privacy related information which is not complete, not clear and difficult to understand, excessive retention of data and the lack of effective possibilities for the users to delete their data from the site. The social networking site agreed to implement some of the recommendations. The Irish Data Protection Commissioner will review progress in July 2012.

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<sup>19</sup> ECJ, Case C-70/10, *Scarlet v SABAM*, 24.11.2011.

<sup>20</sup> ECJ, Joined Cases C-468/10 and 469/10, *Asociación Nacional de Establecimientos Financieros de Crédito (ASNEF) et Federación de Comercio Electrónico y Marketing Directo (FECEMD) v. Administración del Estado*, 24.11.2011.

**Geo-location service** providers were also subject to investigations. A notable example is the agreement reached by the Dutch data protection authority with a provider, by which a technical solution was established which allows citizens and organisations that operate wireless LAN access points to ensure that these access points will not be used for location service. The solution is expected to be scrutinized by other service providers and privacy authorities' world wide.

The **Commission continues to monitor the situation in the Member States**, where doubts exist about the compliance of national rules with EU rules on data protection. In 2011, the Commission dealt with thirteen infringement cases for alleged violation of EU laws on data protection. Four infringement cases concerned Finland and were closed after Finland notified the Commission that it had repealed the offending legislative provision which had been restricting the scope of its national data protection legislation. One infringement case was closed against the United Kingdom, further to the clarifications made on the compliance of its national legislation with EU rules on data protection.

The European Commission evaluated the implementation and application of **EU rules on Data Retention** and outlined its impact on economic operators and consumers as well as its implications on the protection of fundamental rights and freedoms vis-à-vis the protection of personal data. The report concluded that, on the one hand, data retention is a valuable tool for law enforcement purposes. On the other hand, the report identified areas that need to be improved following the uneven transposition of the rules by Member States. In particular, the Commission should ensure more harmonisation in specific areas, such as: the measures ensuring the respect for fundamental rights and freedoms, including the data retention periods, the purpose limitations, as well as the necessary safeguards to access retained data and protect personal data.

The European Commission opened **negotiations with the United States on an agreement to protect personal data exchanged in the context of fighting crime and terrorism**, on 28 March 2011. The European Commission aims to ensure a high level of protection of personal data exchanged between the EU and the US. The Council gave its green light for the conclusion of the new EU-Australia Passenger Name Record agreement which will replace the agreement in place since July 2008. The Council also gave its green light for the signature of the new EU-US Passenger Name Record agreement which will replace the existing one - provisionally applied since 2007 - improving data protection whilst providing an efficient tool to fight serious transnational crime and terrorism. The European Parliament has been asked to give its consent to the US agreement, which is necessary before the Council can adopt its decision on the conclusion of the agreement.

The **European Commission presented a proposal for an EU Passenger Name Record Directive**<sup>21</sup> to fight serious crime and terrorism, in February. The proposal obliges air carriers to provide EU Member States with data on passengers entering or departing from the EU. In this proposal, the Commission lays down common rules for EU Member States to set up national PNR systems. The proposal aims to create a coherent EU wide system which ensures close cooperation between law enforcement authorities within the EU. It contains rules on the protection of personal data involving a number of safeguards for the protection of personal data.

Upon request of the European Parliament, which is discussing the Commission's proposal and preparing a report on it, the **EU Agency for Fundamental Rights** presented an expert opinion on the proposal<sup>22</sup>.

The Commission adopted a **Communication on a European terrorist finance tracking system**<sup>23</sup> ("**European TFTS**") presenting the different options on the possible introduction of such a system as a follow-up to the agreement signed between the EU and the US on the processing and transfer of financial messaging data for the purpose of the Terrorist Financing Tracking Programme on 28 June

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<sup>21</sup> Proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, COM(2011) 32 final, 2.2.2011. Available at: [http://ec.europa.eu/home-affairs/news/intro/docs/com\\_2011\\_32\\_en.pdf](http://ec.europa.eu/home-affairs/news/intro/docs/com_2011_32_en.pdf)

<sup>22</sup> Opinion of the EU Agency for Fundamental Rights on the Proposal for a Directive on the use of Passenger Name Record (PNR) data Available at: [http://fra.europa.eu/fraWebsite/research/opinions/op-passenger-name-record\\_en.htm](http://fra.europa.eu/fraWebsite/research/opinions/op-passenger-name-record_en.htm).

<sup>23</sup> Communication from the Commission on a European terrorist finance tracking system, COM(2011) 429 final.

2010. The Commission specified in its analysis that the European TFTS should have two main objectives. First, the system should contribute to limiting the amount of personal data transferred to the US. Second, it should contribute significantly to efforts to cut off terrorists' access to funding and materials and follow their transactions. The Commission further indicated that the key issues which need to be decided upon before such a system can be established. This includes the need to fully respect the fundamental rights of individuals, in particular data protection (Article 8 of the EU Charter) and judicial redress (Article 47 of the Charter), data security issues, the operational scope of the system, as well as costs. To that end, the Commission has indicated that it will follow the guidance provided in the strategy for the effective implementation of the Charter of Fundamental rights for the evaluation of the different options considered.

**The Commission applied the requirement to protect personal data across a range of policies.** In this regard, the Commission proposal for a regulation on insider dealing and market manipulation (market abuse)<sup>24</sup> makes it clear that any processing of personal data carried out by financial supervisory authorities will have to comply with EU rules on data protection. Similar provisions are also included in the proposals for a regulation on statutory audit of public-interest entities, and markets in financial instruments.

In the area of **recognition of professional qualifications in medical and health professions**<sup>25</sup>, the Commission proposed to introduce an alert mechanism on professionals who have been prohibited by national authorities or courts from pursuing their profession, even temporarily, on the territory of that Member State. The proposal requires specific conditions to be fulfilled for issuing alerts, including the obligation to inform the individual concerned at the time of issuing the alert so as to enable him to make an appeal to national courts against the decision or apply for rectification of such decisions and to have access to remedies in respect of any damage caused by false alerts to other Member States.

The Commission adopted a **communication on smart grids** which sets policy directions to drive forward the deployment of future European electricity networks<sup>26</sup>. Smart meters, which are an inherent part of a smart grid, and which record the consumption of electric energy and communicate that information to the consumer, to the grid operator and energy supplier will be installed in each household following a positive cost benefit analysis in all EU Member States. The communication recognizes that consumer privacy and the protection of personal data need to be addressed to gain the consumer's trust and make the rolling out of smart grids a success for all stakeholders.

In the area of **consumer protection enforcement cooperation**, the Commission adopted guidelines<sup>27</sup> for the implementation of data protection rules in the Consumer Protection Cooperation System (CPCS)<sup>28</sup> in order to ensure that these rules are respected when personal data is processed through the CPCS.

**The Visa Information System (VIS) started operations in Schengen States' consulates in North Africa** on 11 October 2011. With this system, Schengen State's visa authorities will be able to register data on short-stay visa applicants, including their digital photograph and fingerprints, and on the decisions taken on the applications or subsequently. The duly authorised staff of the border, asylum,

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<sup>24</sup> Proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) criminal sanctions for insider dealing and market abuse, COM (2011) 654 final, available at: [http://ec.europa.eu/internal\\_market/securities/docs/abuse/COM\\_2011\\_651\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/abuse/COM_2011_651_en.pdf)

<sup>25</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System, COM(2011) 883 final, available at:

[http://ec.europa.eu/internal\\_market/qualifications/docs/policy\\_developments/modernising/COM2011\\_883\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/policy_developments/modernising/COM2011_883_en.pdf)

<sup>26</sup> Commission Communication: Smart Grids: from innovation to deployment, COM (2011) 202 final, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0202:EN:HTML:NOT>

<sup>27</sup> Commission Recommendation 2011/136/EU on guidelines for the implementation of data protection rules in the Consumer Protection Cooperation System (CPCS), OJ L 57, 2.3.2011, p.44 – 53..

<sup>28</sup> The aim of the CPCS is to enable public enforcement authorities - which are part of the EU-wide network established by Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) – to exchange information on possible breaches of consumer protection laws within a safe and secure environment.

and immigration authorities will also have access to the VIS for the performance of their task. At a later stage, Europol and Schengen States' authorities responsible for the prevention, detection and investigation of terrorist or other serious criminal offences will be able to request access to data registered in the VIS under restrictive conditions. Data processing in the VIS is subject to specific data protection rules. Any person has the right to receive the data related to him/her registered in the system, to request the correction of inaccurate data, and to request the deletion of data recorded unlawfully as well as to lodge a complaint with the national data protection authorities in order to ensure the respect of his/ her rights. The European Data Protection Supervisor and Member States data protection authorities are competent to supervise the compliance with data protection rules applicable.

## Freedom of expression

The Charter guarantees the right to freedom of expression for everyone. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Members of the European Parliament addressed the issue of **media freedom, pluralism and independent governance** in several questions to the Commission. The Commission replied that media pluralism is an essential condition for preserving the right to information and freedom of expression that underpins the democratic process. In this respect, the Commission created a **High Level Group on Media Freedom and Pluralism**. The objective of this independent group, chaired by the former President of Latvia (Professor Vaira Vīķe-Freiberga), is to draw up a public report with recommendations for the respect, protection, support and promotion of pluralism and freedom of the media in Europe. The Commission has also initiated a Centre for Media Pluralism and Media Freedom within the Robert Schuman School of the European University Institute to reflect and advise on the underlying issues.

### Revision of the Hungarian Media Law

Following the Commission's intervention, using the full extent of its legal powers, the **Hungarian government agreed to amend its national media law** so that it complies with the concerns raised by the Commission on four points that concern EU law, namely: the obligation of balanced coverage, ii) country of origin principle, iii) registration requirements and iv) offensive content. In taking this action the Commission acted in line with the Treaty by focusing its intervention on areas subject to EU law. National courts and, if necessary, the European Court of Human Rights, could review issues of national competence.

A further examination of the Law by the Hungarian Constitutional Court introduced further amendments as regards the provisions which unconstitutionally limited freedom of expression of the written press. This concerned *inter alia* limitations to the protection of sources, restrictions on content for the written press and the provisions on the Media Ombudsman. The Commission urged the Hungarian authorities to respect this court ruling, and to implement it with the same speed and efficiency they applied to the Commission's assessment on the EU law aspects of this media law<sup>29</sup>.

The Commission received parliamentary questions and letters from citizens in relation to an Italian draft law on the use of wiretapping, which allegedly contained sanctions in the event of publication in the media of information obtained through taps. There is no EU legislation harmonising the use of wiretapping in the framework of investigations and criminal proceedings. The data protection directive provides for a derogation for the processing of personal data carried out solely for journalistic purposes only if they are necessary to reconcile the right to privacy with the rules

<sup>29</sup> Vice-President Kroes has expressed her concerns both in letters to the Hungarian authorities and in a bilateral meeting with the responsible Minister of Justice. Ruling of the Hungarian Constitutional Court, 19 December 2011, 1746/B/2010, available at: [www.mkab.hu/admin/data/file/1146\\_1746\\_10.pdf](http://www.mkab.hu/admin/data/file/1146_1746_10.pdf)

governing freedom of expression<sup>30</sup>. The compatibility of the draft law with these provisions would have to be ensured, if the draft law would come before the Italian parliament for adoption.

In its landmark **Scarlet ruling** (see section on *data protection*), the **Court of Justice of the European Union** found that obliging an internet service provider (ISP) to install the contested filtering system could potentially undermine freedom of information since that system might not distinguish adequately between unlawful content and lawful content, with the result that its introduction could lead to the blocking of lawful communications. The reply to the question whether a transmission is lawful also depends on the application of statutory exceptions to copyright which vary from one Member State to another. Moreover, in some Member States certain works fall within the public domain or can be posted online free of charge by the authors concerned.

## Freedom to conduct a business

The Charter recognises the freedom to conduct a business in accordance with Union law and national laws and practices. The freedom to conduct a business was taken into account in different areas of EU policy, including: new legislation on market in financial instruments, insurance mediation, credit ratings Agency<sup>31</sup> and on recording equipment for road transport (tachographs)<sup>32</sup>.

The freedom to conduct a business was also a key consideration in the preparation of the **Common European Sales Law**<sup>33</sup> proposal aimed at removing obstacles resulting from divergences between national contract laws. This Commission proposal offers a single set of contract law rules which businesses can choose to apply to any of their cross-border transactions throughout the EU. For example, the Common European Sales Law could be used when companies feel that differences in contract laws, such as remedies for faulty products, create considerable costs and are an important barrier to their sales to another country.

The negotiations in the European Parliament and in the Council on the proposed amendments to EU rules **on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters continue**<sup>34</sup>. If these amendments are adopted judgements issued in another Member State in civil and commercial matters will be treated like domestic judgements. This would in effect make cross-border litigation much less cumbersome, time-consuming and costly than it is today. Under the current EU rules, a judgment given in one Member State does not automatically take effect in another Member State. In order to be enforced in another country, a court in that country first has to validate the decision and declare it enforceable. This is done in a special procedure ("exequatur") that takes place after the judgment has been obtained and before concrete measures of enforcement can be taken.

Negotiations in the European Parliament and in the Council on the **amendments to EU rules for protecting information systems against attacks continue**. The Council adopted a general approach on the proposal in 2011 and the European Parliament is expected to vote on it in early 2012. The

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<sup>30</sup> Article 9 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1996 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

<sup>31</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) n°1060/2009 on credit rating agencies, COM(2011) 747 final, available at:  
[http://ec.europa.eu/internal\\_market/securities/docs/agencies/COM\\_2011\\_747\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/agencies/COM_2011_747_en.pdf)

Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings of collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of the excessive reliance on credit ratings, COM(2011) 746 final, available at: [http://ec.europa.eu/internal\\_market/securities/docs/agencies/COM\\_2011\\_746\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/agencies/COM_2011_746_en.pdf)

<sup>32</sup> Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) n° 561/2006 of the European Parliament and the Council, 2011/0196 (COD), available at:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0451:FIN:EN:PDF>

<sup>33</sup> Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law, COM(2011) 635 final, available at:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0635:FIN:EN:PDF>

<sup>34</sup> Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, COM/2010/748, available at:  
[http://ec.europa.eu/justice/policies/civil/docs/com\\_2010\\_748\\_en.pdf](http://ec.europa.eu/justice/policies/civil/docs/com_2010_748_en.pdf)

amendments propose making the use of tools for committing offences and the illegal interception of information systems a crime and improving European criminal justice and police cooperation. They also contain measures on the storage of data and the exchange of data between law enforcement agencies, which are in compliance with EU data protection rules. The strengthening of the penalisation of the production, sale, procurement for use, import, distribution or otherwise making tools for cyber attacks available was worded carefully in order not to criminalise lawful behaviour, such as the use of these tools by ICT security companies to test the effectiveness of their products or by organisations and competent authorities to test and ensure the security of networks and information systems under their responsibility. Criminalisation of such acts would violate the freedom to conduct a business, enshrined in the Charter.

In its landmark **Scarlet ruling** (see section on *data protection*), the **Court of Justice of the European Union** found that obliging an internet service provider (ISP) to install a filtering system such as the one at stake would result in a serious infringement of the freedom of the ISP concerned to conduct its business since it would require that ISP to install a complicated, costly, permanent computer system at its own expense. The Court noted in particular the characteristics of the contested filtering system involved monitoring all the electronic communications made through the network of the ISP concerned in the interests of those right holders, it had no limitation in time, was directed at all future infringements and was intended to protect not only existing works, but also future works that had not yet been created at the time when the system was introduced.

## Right to property

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.

### Cross-border debt recovery in civil and commercial matters

The Commission proposed legislation to facilitate **cross-border debt recovery in civil and commercial matters**<sup>35</sup>. The proposal will establish a new uniform European procedure which will enable a creditor to prevent the withdrawal or transfer of funds standing to the credit of his debtor in any bank account located in the EU. The order will be of a protective nature i.e. it will only block the debtor's account. The procedure ensures both the right of a creditor to secure effective enforcement of its claim and the protection of the defendant's rights, particularly the right to redress, privacy and to data protection.

The Commission adopted a comprehensive strategy to review the legal framework in which **Intellectual Property Rights** operate<sup>36</sup>. The Commission announced that such review will require assessing the impact, not only on the right to property, but also on the rights to private life, protection of personal data, freedom of expression and information and to an effective remedy and it underlined that it will ensure that its proposal complies with *all* the fundamental rights involved.

In its landmark **Scarlet ruling** (see section on *data protection*) relating to the injunction for an internet service provider to install a filtering system, the **Court of Justice of the European Union** declared that the protection of the right to intellectual property is enshrined in Article 17(2) of the Charter but there is, however, nothing in the wording of that provision or in the Court's case-law to suggest that that right is inviolable and must for that reason be absolutely protected. The Court added that in the context of measures adopted to protect copyright holders, national authorities and

<sup>35</sup> Proposal for a Regulation of the European Parliament and of the Council Creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters, COM(2011) 445 final, available at:

[http://ec.europa.eu/justice/civil/files/comm-2011-445\\_en.pdf](http://ec.europa.eu/justice/civil/files/comm-2011-445_en.pdf)

<sup>36</sup> Communication from the Commission: A single market for intellectual property rights boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe, COM(2011) 287 final, available at:

[http://ec.europa.eu/internal\\_market/copyright/docs/ipr\\_strategy/COM\\_2011\\_287\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf)

courts must strike a fair balance between the protection of copyright and the protection of the fundamental rights of individuals who are affected by such measures.

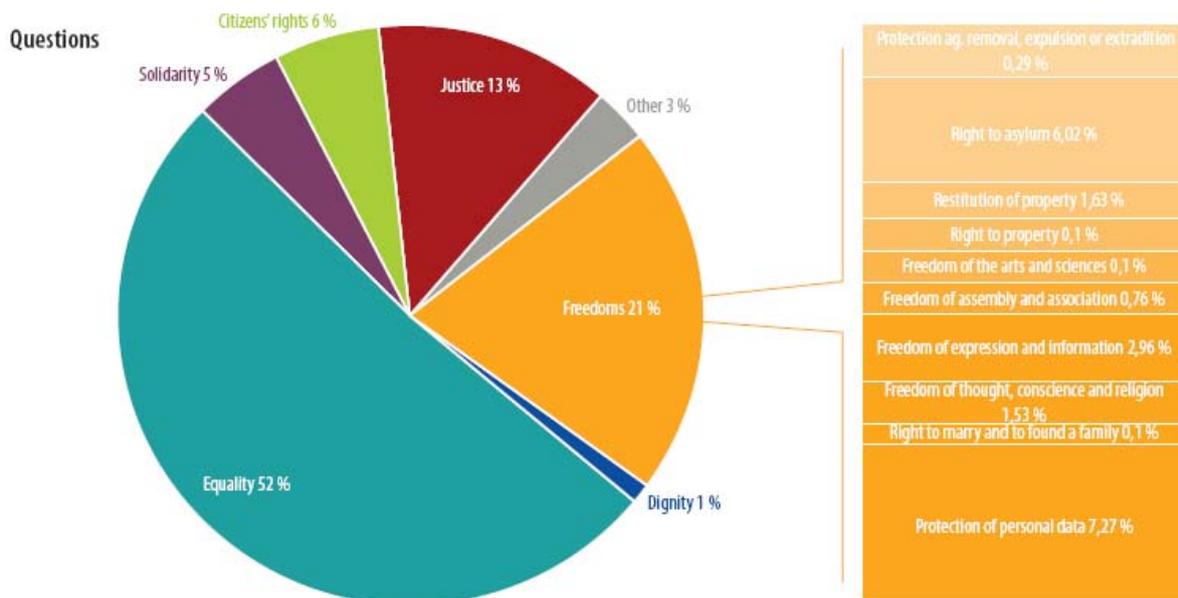
The European Commission presented a proposal for a **unitary patent protection**. This proposal, which was introduced through the special voluntary procedure (so-called "enhanced cooperation") would ensure that holders of European patents can apply for one single patent protection at the European Patent Office (EPO) for the entire territory of the 25 participating Member States.

The Commission has been in contact with the Spanish authorities in view of the number of complaints received from non-Spanish citizens on the **Spanish coastal law**. This legislation aims to protect the coast from abusive constructions. It applies to private projects which run the risk of being demolished as they are located in areas regulated by the coastal law. It resulted from the Commission's assessment that the enforcement of the Spanish coastal law affects both Spanish nationals and nationals from other Member States.

The *European Parliament* continued to pay attention to the application of the Spanish coastal law. In particular the Petition's Committee dealt with a number of petitions filed by affected proprietors. In addition, a seminar on property rights in the EU was organized in the European Parliament<sup>37</sup>.

The Spanish coastal law does not provide for a *financial compensation* for the property loss resulting from the demarcation of the maritime-terrestrial public domain. It provides instead for a special form of compensation consisting of the granting of an administrative concession. The Commission has no power to address the adequacy of this compensation mechanism as a sufficient connection with EU law has not been identified. The question of whether this special form of compensation is in line with the case law of the European Court of Human Rights should be examined by national courts and, after having exhausted domestic legal remedies, by the Strasbourg Court itself.

The *provision of appropriate information* to all interested parties throughout the chain of parties involved (cadastre, notaries, real estate services, etc.) is crucial, in particular for EU citizens having exercised the right to free movement across the EU and having transferred funds to acquire property potentially affected by the coastal law. The interconnection of land registers across the EU, such as through the European Land Information Service (EULIS), can contribute to improving the situation in that respect. The Commission will intensify its efforts in the Council working party on e-Law (e-Justice) so that the European e-Justice portal provides access to land information stored in land registers of the different Member States of the EU.



<sup>37</sup> "EU Property Rights and Wrongs", Seminar organized by ALDE MEPs Diana Wallis and Ramón Tremosa I Bacells, 14 June 2011.

## Right to asylum

The right to asylum is guaranteed by the Charter.

**New rules were adopted on standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted.** The new provisions of the Qualification directive need to be transposed into national law within two years<sup>38</sup>. The amendments set standards for the identification of people in need of international protection in the EU either as refugees or as beneficiaries of subsidiary protection. The text also ensures a minimum level of benefits and rights for both categories of beneficiaries of international protection throughout the EU. Member states that wish to do so can provide for more favourable rules for beneficiaries of international protection.

Negotiations continued in the European Parliament and the Council to amend some of the existing rules of the **Common European Asylum System**, with the aim of ensuring higher standards of protection and a more uniform treatment of asylum seekers in Member States. The Commission presented modified proposals on reception conditions for asylum seekers<sup>39</sup> as well as on asylum procedures<sup>40</sup>. The proposals aim to reduce room for administrative error in asylum procedures, thus ensuring a better respect for the principle of *non-refoulement*. If adopted, the new rules will contribute to enhancing gender equality and promoting the best interests of the child principle in the asylum procedures and, in addition, to reinforcing the principle of non-discrimination. The right to liberty will also be enhanced in particular by underlining that a person shall not be detained for the sole reason that he/she has registered an application for international protection; similarly, it is foreseen that detention should only be allowed in exceptional cases and only if it is in line with the principles of necessity and proportionality with regard both to the manner and to the purpose of such detention. Access to an effective remedy is also ensured.

The **European Asylum Support Office (EASO)** became fully operational. Its legal basis foresees that the EASO must respect fundamental rights and observe the principles recognised by the EU Charter. In particular, EASO's missions must be carried out in accordance with the right to asylum. The first EASO asylum support teams were deployed in Greece in May 2011. The support teams will provide expertise relating to interpreting services, information on countries of origin and knowledge of the handling and management of asylum cases. The aim is to support the establishment of a functioning asylum system in Greece and to ensure full compliance with fundamental rights in the implementation of EU asylum legislation.

## Protection in the event of removal, expulsion or extradition

The Charter prohibits the removal, expulsion or extradition to a State where there is a serious risk that a person would be subjected to the death penalty, torture, or other inhuman or degrading treatment or punishment.

The Commission published a **large scale evaluation of the negotiation and conclusion of readmission agreements by the Union**<sup>41</sup>. These are treaties which establish obligations, criteria and procedures for third countries to readmit their own nationals, found to reside irregularly in a Member State, as well as stateless persons and nationals of other third countries, who have

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<sup>38</sup> Directive 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, PE-CONS 50/11, available at: <http://register.consilium.europa.eu/pdf/en/11/pe00/pe00050.en11.pdf>

<sup>39</sup> Amended proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers (Recast), COM(2011) 320 final, available at: <http://eurlex.europa.eu/Notice.do?val=574273:cs&lang=en&list=577916:cs,574273:cs,&pos=2&page=1&nbl=2&pgs=10&hwords=&checktext=&checkbox=&visu=#texte>

<sup>40</sup> Amended proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast), COM(2011) 319 final, available at: <http://eurlex.europa.eu/Notice.do?val=574274:cs&lang=en&list=574274:cs,&pos=1&page=1&nbl=1&pgs=10&hwords=&checktext=&checkbox=&visu=#texte>

<sup>41</sup> Communication from the Commission: Evaluation of EU Readmission Agreements, COM(2011) 76 final, available at: [http://ec.europa.eu/home-affairs/news/intro/docs/COMM\\_PDF\\_COM\\_2011\\_0076\\_F\\_EN\\_COMMUNICATION.pdf](http://ec.europa.eu/home-affairs/news/intro/docs/COMM_PDF_COM_2011_0076_F_EN_COMMUNICATION.pdf)

transited through their territory on the way to the European Union. A considerable number of recommendations came out of the Commission's evaluation, including with regard to the further strengthening of fundamental rights protection and the international protection of refugees during readmission procedures. Amongst other measures, the Commission argued the necessity of introducing provisions that commit to respecting fundamental rights, especially in consideration of third countries which are not party to the relevant international conventions. In case of persistent human rights violations in a third country in general, the Commission would be in favour of a possibility of suspending the agreement. Also, the Commission announced its intention of launching a pilot project, aimed at monitoring the wellbeing of persons after they have been readmitted to a third country, with a view to establishing a so called "post-return monitoring mechanism".

The Court of Justice of the European Union delivered two rulings on the **compatibility of criminalising irregular stays under national law with the EU rules on return of irregular migrants**<sup>42</sup>. The Court found that these rules preclude national law from imposing a prison term on an irregularly staying third-country national who does not comply with an order to leave the national territory. In a further case, the Court found that EU rules preclude national legislation imposing a prison sentence on an irregularly staying third-country national during the return procedure. However, the Court specified that such prison sentences could be applied to third-country nationals to whom the return procedure has been applied and staying irregularly with no justified grounds for non-return.

The **EU Agency for Fundamental Rights** issued a report on the **detention of third-country nationals in return procedures**<sup>43</sup>. This report examined law and practice on the deprivation of liberty of irregular migrants pending their removal against the applicable international human rights law framework in all EU Member States.

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<sup>42</sup> ECJ, Case C-61/11, *El Dridi*, 28.4.2011 & Case C-329/11, *Achughbabian*, 6.12.2011.

<sup>43</sup> EU Agency for Fundamental Rights Report, "*Detention of third-country nationals in return procedures*", November 2011, available at: [http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/pub\\_detention\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub_detention_en.htm)

### 3. Equality

*Equality before the law*

*Non-discrimination*

*Cultural, religious and linguistic diversity*

*Equality between women and men*

*The rights of the child*

*The rights of the elderly*

*Integration of persons with disabilities*

- Major progress has been achieved on the development of a common EU approach in tackling the exclusion of **Roma**. Member States supported the Commission's proposal for an EU Framework for national Roma integration strategies up to 2020. Four priority fields of integration have been identified: education, employment, health and housing.
- The Commission adopted an **EU Agenda on the Rights of the Child**, which sets out priorities and key actions to make these rights effective in practice. New EU rules on combating the sexual abuse and sexual exploitation of children and child abuse material have been adopted that will make it easier to fight crimes against children.
- The EU is bound by the **UN Convention on the Rights of Persons with Disabilities** since 22 January 2011. This implies that the rights enshrined therein need to be implemented and respected by the EU in its legislative actions as well as in its policy-making, to the extent of its competence.
- Citizens, members of the European Parliament and civil society representatives expressed concern about various forms and manifestations of **xenophobia**. Racism, xenophobia and related intolerance are contrary to EU principles of human dignity, equality and respect for fundamental rights, including the rights of persons belonging to minorities.

## Non-discrimination

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

Discussions in the Council have continued on the **Commission's proposal for new rules on Equal Treatment**<sup>44</sup>. The discussions in the Council focussed on provisions on the duty to provide reasonable accommodation for people with disabilities<sup>45</sup> and the issue of age. In accordance with the EU Treaty, unanimity is required in the Council to adopt the new rules on Equal Treatment. While many Member States generally support the draft Directive, a few other Member States continue to voice more fundamental objections.

The **Court of Justice of the European Union** declared invalid as from 21 December 2012 a derogation contained in EU gender equality legislation<sup>46</sup> that enables insurers under certain conditions to differentiate between men and women in individuals' premiums and benefits<sup>47</sup>. The derogation was found incompatible with the objective of that piece of legislation in the insurance field which concerns unisex pricing, and therefore with Articles 21 and 23 of the Charter. On 22 December 2011, the Commission issued guidelines<sup>48</sup> aimed at facilitating the implementation of the ruling at national level.

The **EU Agency for Fundamental Rights reported on the exclusion and discrimination of migrants, minorities in employment**<sup>49</sup>. The Agency reported that the total number of complaints of discrimination has increased as a direct consequence of the implementation of the Equality Directives in the EU Member States. However, according to the Agency's findings there are still barriers for victims that need to be overcome.

In another report, the **EU Agency for Fundamental Rights examined the legal protection of persons with mental health problems under non-discrimination law**<sup>50</sup>. According to the report's findings almost all EU Member States provide for the protection of persons with mental health problems in non-discrimination legislation. In most cases persons with mental health problems also benefit from reasonable accommodation measures, or other protection measures, in the employment context.

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<sup>44</sup> 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=CELEX:52008PC0426:EN:NOT>

<sup>45</sup> Reasonable accommodation means ad-hoc measures to accommodate a disabled person's individual needs (as opposed to accessibility which needs to be provided in an anticipatory manner).

<sup>46</sup> Article 5(2) of Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373 of 21.12.2004.

<sup>47</sup> ECJ, Case C-236/09, *Test-Achats*, 30.4.2011

<sup>48</sup> Communication from the Commission: Guidelines on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 (*Test-Achats*), COM(2011) 9497 final, available at: [http://ec.europa.eu/justice/gender-equality/files/com\\_2011\\_9497\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/com_2011_9497_en.pdf)

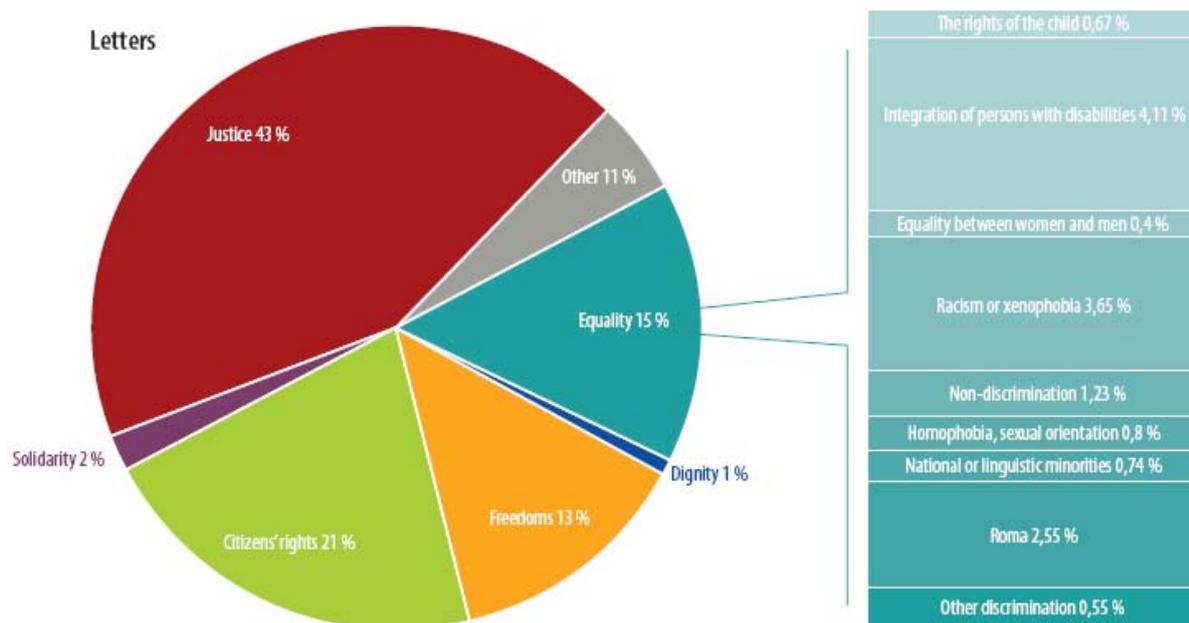
<sup>49</sup> EU Agency for Fundamental Rights Report – "Migrants, minorities and employment - Exclusion and discrimination in the 27 Member States of the European Union (Update 2003-2008)", July 2011, available at:

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub\\_migrants-minorities-employment\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub_migrants-minorities-employment_en.htm)

<sup>50</sup> EU Agency for Fundamental Rights Report – "The legal protection of persons with mental health problems under non-discrimination law", October 2011, available at:

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub-legal-protection-persons-mental-health-problems\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-legal-protection-persons-mental-health-problems_en.htm)

The report concludes by presenting examples where legislation extends the duty to provide reasonable accommodation to other areas.



### European Agenda for the Integration of Third-Country Nationals

Strong guarantees for the **fundamental rights of migrants** as well as the need for a positive attitude to diversity and equal treatment are promoted in the "European Agenda for the Integration of Third-Country Nationals", which the Commission presented on 20 July 2011.<sup>51</sup> Efforts to fight against discrimination and to give migrants instruments to become acquainted with the fundamental values of the EU and its Member States need to be strengthened.

### Common EU framework for tackling the exclusion of Roma

The EU made a major step forward in **promoting the social and economic integration of Roma** with the Commission's communication on the "EU framework for national Roma integration strategies up to 2020"<sup>52</sup>. This EU Framework calls upon Member States to prepare or revise their national Roma integration strategies in the light of the EU goals defined in the framework, and to present them to the Commission by the end of December 2011. The EU Framework was also endorsed by the European Council<sup>53</sup> and welcomed by the European Parliament.

### Commitment to apply the prohibition of discrimination on the ground of sexual orientation in practice

**Homophobia is an unacceptable violation of human dignity** that is incompatible with the founding values of the EU<sup>54</sup>. The Commission is using all the powers at its disposal to fight against such phenomena. In particular, the Commission followed-up petitions and parliamentary questions on discriminatory practices on grounds of sexual orientation, when they concerned matters falling

<sup>51</sup> Communication from the Commission: European Agenda for the Integration of Third-Country Nationals, COM(2011) 455 final, available at: [http://ec.europa.eu/home-affairs/news/intro/docs/110720/1\\_EN\\_ACT\\_part1\\_v10.pdf](http://ec.europa.eu/home-affairs/news/intro/docs/110720/1_EN_ACT_part1_v10.pdf)

<sup>52</sup> Communication from the Commission: An EU Framework for National Roma Integration Strategies up to 2020, COM(2011) 173 final, available at: [http://ec.europa.eu/justice/policies/discrimination/docs/com\\_2011\\_173\\_en.pdf](http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf)

<sup>53</sup> European Council Conclusions, 24 June 2011, [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/123075.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/123075.pdf).

<sup>54</sup> Statement of Vice-President Viviane Reding on the International Day Against Homophobia and Transphobia (IDAHO), available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/303&format=HTML&aged=0&language=EN&guiLanguage=en>

within EU competence. One case concerned the refusal of Polish authorities to issue certificates on civil status to citizens who wish to marry or conclude a registered partnership with a person of the same sex in a Member State where this is possible.

The Commission intervened with the Polish authorities on the basis that this practice is incompatible with the respect of private and family life (Art. 7 of the Charter), the prohibition of non-discrimination on the basis of sexual orientation (Art. 21 of the Charter) and EU rules guaranteeing free movement and residence. Further to the Commission's intervention, the Polish authorities informed that steps would be undertaken to abolish the practice of asking the sex of the future spouse or partner.

#### **Medical test to assess asylum applications based on allegations of persecution on grounds of sexual orientation**

A report from the EU Agency for Fundamental Rights revealed the use by the Czech authorities of a specific medical test in order to assess asylum applications based on allegations of persecution on grounds of sexual orientation in the country of origin<sup>55</sup>.

The Commission intervened against the practice of "phallometric testing"<sup>56</sup> on the basis of its incompatibility with EU instruments regarding the grant of international protection and notably the Charter, in particular Articles 4 and 7, concerning the prohibition of torture and inhuman or degrading treatment and respect for private and family life. The test constitutes a strong interference with the person's private sphere and dignity, in particular for asylum seekers who have been persecuted due to their sexual orientation.

Further to the Commission's intervention, the Czech authorities confirmed that the contested practice would no longer be used in the assessment of asylum applications.

**New EU rules on asylum qualification** (see Protection in the event of removal, expulsion or extradition) strengthen the reasons of protection when granting the refugee status to Lesbian, Gay, Bi-sexual and Transgender (LGBT) persons and introduce an explicit reference to gender identity as a protected ground for the first time.

The **Court of Justice of the European Union** confirmed in a ruling on equal treatment for married couples and registered partners that a registered partner in a same sex German life partnership was entitled to receive a supplementary retirement pension under an occupational pension scheme in the same way a married partner is. The Court stated that this applied if the life partner is in a situation that is legally and factually comparable to that of a married person as regards pensions<sup>57</sup>.

The **Commission asked the EU Agency for Fundamental Rights to conduct a specific survey on hate crimes and discrimination against LGBT persons** in all Member States and Croatia. The survey will complement existing studies published by the Agency<sup>58</sup> and ask in particular LGBT persons a series of questions about whether they have experienced discrimination, violence, verbal abuse or hate speech on the grounds of their sexual orientation or gender identity. It will also ask participants to identify the context in which such incidents took place, and their nature.

In addition, the Strategy on equality between women and men 2010-2015 foresees a study on specific issues pertaining to **sex discrimination in relation to gender identity**. The work for launching

<sup>55</sup> EU Agency for Fundamental Rights Report, "Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity 2010 Update", November 2010, available at:

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/pub-lgbt-2010-update\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub-lgbt-2010-update_en.htm)

<sup>56</sup> The practice of 'phallometric testing' consists of verifying the physical reaction to heterosexual pornographic material of gay men who have filed a claim for asylum on the basis of homosexual orientation.

<sup>57</sup> ECJ, Case C-147/08, *Jürgen Römer v. City of Hamburg*, 10.5.2011.

<sup>58</sup> EU Agency for Fundamental Rights Report, "Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States", November 2011, available at:

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/pub-lgbt-2010-update\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub-lgbt-2010-update_en.htm)

this study has been completed. When the results of this study are available, the Commission will look at the appropriate follow-up.

### *How are the rights of persons belonging to minorities safeguarded in the EU?*

The **respect for the rights of persons belonging to minorities** is one of the founding values of the European Union, and is explicitly mentioned following the entry into force of the Lisbon Treaty. The Charter explicitly prohibits discrimination on the basis of membership of a national minority. However, Member States maintain general powers to take decisions about minorities and the use of languages on their respective territories.

In 2011, the Commission received several parliamentary questions and letters concerning the amendments to the **Lithuanian Law on Education**, alleging that they considerably reduce the scope of teaching in national minority languages in primary and secondary schools in Lithuania. The Polish pupils should be the most affected by these legislative changes. The Commission explained that there is no Union law on the regime governing the use of regional or minority languages or the rules on languages of instruction in schools and these matters remain the sole responsibility of the Member States which must ensure the protection of rights of minorities living in their territory.

A number of EU legislation and programmes **contributed to improving the situation of persons belonging to minorities**. These instruments address certain difficulties which are likely to affect them. In particular, in application of the powers that it has under the Treaties, the EU has put in place a legal framework to fight discrimination and hate speech against the persons belonging to minorities.

In 2011, a report of the **EU Agency for Fundamental Rights** examined in a report<sup>59</sup> what the Treaty of Lisbon means for the protection of minorities and the policies the EU has recently adopted in this field. The report further provides evidence of the persistent phenomenon of discrimination found in many areas of life, including employment, housing, healthcare and education.

### *What does the EU do to fight against racism, xenophobia and related forms of intolerance?*

The Commission pursued its efforts to ensure the conformity of national laws with **EU legislation against racism and xenophobia**. These rules have to be introduced by Member States into their penal legislation in order to allow citizens to benefit from them, and courts to apply them. By the end of the year, twenty-two Member States had communicated to the Commission the national laws intended to penalise racist and xenophobic hate speech and to provide for an aggravating circumstance for crimes having a racist or xenophobic motivation.

The Commission received an **important number of letters and parliamentary questions concerning various forms and manifestations of racism and xenophobia**, targeted against different groups or individuals belonging to these groups, in particular against Roma. Racist and xenophobic attitudes expressed by opinion leaders were of particular concern as they contribute to a social climate that condones racism and xenophobia and may therefore propagate more serious forms of racist conduct, such as racist violence. Reluctance to react to any incidents of racism or xenophobia contributes to understating the seriousness of these phenomena.

The Fifth Annual Seminar between the European Commission and the State of Israel on the **Fight against Racism, Xenophobia and anti-Semitism** enabled effective sharing of experiences, practices and methodologies relating to racist data and trends; access to justice and effective redress against racist discrimination; fight against racist hate speech; and the prevention of racism through education, training and remembrance activities.

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<sup>59</sup> EU Agency for Fundamental Rights Report, "Respect for and protection of persons belonging to minorities 2008-2010", September 2011, available at:

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub-respect-protection-minorities\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-respect-protection-minorities_en.htm),

Data collected by the **EU Agency for Fundamental Rights**<sup>60</sup> shows that few Member States have official data and statistics on anti-Semitic incidents. Even where data exist, they are not comparable, since they are collected using different definitions and methodologies. Furthermore, in many EU Member States Jewish organisations or other civil society organisations do not collect data on anti-Semitic incidents in a systematic way, as there is no complaints mechanism in place to receive and investigate allegations. Where such data exists, usually as lists of cases, they are collected ad hoc by civil society organisations or are based on media reports with varying degrees of validity and reliability.

## Rights of the child

The Charter guarantees the right to such protection and care as is necessary for the well-being of children (Article 24 of the Charter). This Article is based on the United Nations Convention on the Rights of the Child, ratified by all 27 Member States. The Charter recognises children as bearers of autonomous rights, not just as subjects in need of protection. It recognises the need to protect children from abuse, neglect, violations of their rights and situations which endanger their well-being.

The Charter further provides that the best interests of the child must be a primary consideration in all actions relating to children. This principle applies to all actions concerning children. It includes children's right to maintain contact with both parents in case of a divorce, the right to express their views freely and for their views to be taken into consideration on matters which concern them. An important principle of the Charter is that when decisions are being made on what is in the best interests of children, children should have the opportunity to express their views and these views should be taken into account.

The **EU Agenda for the Rights of the Child**<sup>61</sup> adopted by the Commission aims to put in practice the rights of the child enshrined in the Charter and the UN Convention on the Rights of the Child through a comprehensive programme of actions for the years 2011-2014. The EU Agenda identified 11 concrete actions which will contribute to the effectiveness of the rights of the child. This aim is an integral part of the Charter Strategy and, for this reason the impact of EU legislative initiatives on these rights is thoroughly assessed.

The public consultation on the right of family reunification, launched by the Commission in November 2011 tries to explore how the best interests of the child can be facilitated and ensured in practice<sup>62</sup>.

To raise awareness among children about their rights and facilitate their participation in matters that concern them, a **new website for children** and teenagers specifically dedicated to children's rights was launched in all EU languages. It contains child-friendly texts, games and quizzes informing children about their rights<sup>63</sup>. The Commission is also preparing a strategy for a Better Internet for Children, to empower and protect them, so that they can fully enjoy the Internet and benefit from it.

**New rules on combating the sexual abuse and sexual exploitation of children and child abuse material**<sup>64</sup> adopted by the EU will make it easier to fight crimes against children by acting on different fronts. A wide range of situations of sexual abuse and exploitation will be criminalised, covering new phenomena helped by the Internet, such as child grooming, webcam abuse or web viewing of child abuse material. More detailed provisions on levels of penalties will ensure greater

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<sup>60</sup> EU Agency for Fundamental Rights Report, "Antisemitism - Overview of the situation in the European Union 2001-2010", June 2011, available at: [http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub-antisemitism-update-2011\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-antisemitism-update-2011_en.htm)

<sup>61</sup> Commission Communication: An EU Agenda for the Rights of the Child, COM(2011) 60 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0060:en:NOT>

<sup>62</sup> Commission Green paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC), COM(2011) 735 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0735:FIN:EN:PDF>

<sup>63</sup> Available at: <http://ec.europa.eu/0-18>

<sup>64</sup> Directive on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, available at: <http://register.consilium.europa.eu/pdf/en/11/pe00/pe00051.en11.pdf>

consistency with the severity of the offence and among Member State laws. It will also be possible to prosecute offences after child victims have reached the age of majority; confidentiality rules will not prevent professionals working with children from reporting offences; and special police units to identify child victims (especially of child abuse material) will be set up and provided with effective investigative tools. The new legal framework includes also measures to combat "child sex tourism" and child abuse material on the Internet. Member States will be obliged to ensure prompt removal of child abuse material pages and take action to have them removed if hosted outside the European Union. In addition, Member States may block access to such web pages following transparent procedures and providing safeguards. The new rules reinforce the protection of child victims, provide for preventive measures with regard to convicted offenders and facilitate background checks prior to employment involving contact with children.

**In the area of justice**, newly proposed rules on **victim rights**<sup>65</sup> guarantee that children's special needs for protection and support are met throughout the proceedings to ensure their active participation and avoid of additional trauma. Children should be presumed to be vulnerable victims and authorities would have to determine which special measures should be provided to them. These measures could encompass adaptation of the interview rooms to children's needs, use of communication technologies and video to avoid contact between the child and the offender. Children will also be entitled to receive information in a way they can understand. As regards **procedural rights**, a new set of rules foresees that in case a child is arrested, the child's legal representative or another adult, depending on the interest of the child, is informed about it. As regards the rights of juvenile prisoners, the Commission carried out a public consultation to find more information on detention issues, including on the situation of children in pre-trial detention.

#### **Case law on custody rights and the return of abducted children**

The **Court of Justice of the European Union** confirmed that a child should have an opportunity to be heard in custody proceedings in a case concerning the custody rights and the return of an abducted child<sup>66</sup>. This is however not an absolute obligation for the court, as the court must first determine whether it is in line with the best interests of the child in each individual case. The Court of Justice further confirmed that it is up to the national courts of the Member State where the child used to live to assess whether the child had an opportunity to be heard. Courts of other Member States must respect the results of this assessment when deciding on the return of the child.

The **European Court of Human Rights** clarified that when issuing an order to return an abducted child, the courts must duly assess whether the return of the child would not cause psychological trauma to the child<sup>67</sup>. Finally, the courts must consider whether there are any alternative solutions to ensure contact between the child and the parent requesting the return. The European Court of Human Rights confirmed the obligation of the state authorities to facilitate the reunion of the parent with the child in one other case<sup>68</sup>.

The Commission has also continued to promote cross-border cooperation between Member States in cases of **criminal abductions of children** through child alert systems. They are designed to provide a quick response in cases of a criminal abduction of a child by disseminating relevant information to the public within hours of the disappearance of a child. The Commission's objective is that such a system be put in place in all EU Member States. At the end of 2011, such systems were operational in 10 EU Member States. There are some differences in the functioning of the systems, but in most

<sup>65</sup> Proposal for a Directive of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime, COM(2011) 275 final, available at:

[http://ec.europa.eu/justice/policies/criminal/victims/docs/com\\_2011\\_275\\_en.pdf](http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_275_en.pdf)

<sup>66</sup> ECJ, Case C-491/10, *Aguirre Zarraga*, 22.12.2010.

<sup>67</sup> ECtHR, *Šneerson and Campanella v. Italy*, Application no. 14737/09

<sup>68</sup> ECtHR, *Shaw v. Hungary*, Application no. 6457/09

cases they are run through NGO co-operation with public authorities and law enforcement.<sup>69</sup> The Commission's objective is that such a system is put in place in all EU Member States.

The Commission also continued discussions with Member States to ensure that the **116 000 hotline for missing children** becomes operational in all Member States. This hotline, which offers help, support and a potential lifeline for missing children and their parents, is currently operational in only 17 Member States.

The **Hague Convention on the Civil Aspects of International Child Abduction** entered into force in Russia on 1<sup>st</sup> October. In addition, Japan took steps in view of its accession to the same Convention. These developments contribute to the protection of children in the EU in case of abductions. The Commission submitted proposals to ensure consistency in the application of the Convention between the EU and the third States which have acceded to it in recent years<sup>70</sup>.

The Commission prepared a report to better assess what has already been done to **protect children in the digital world** and identify what further steps might be necessary<sup>71</sup>. The report found that Member States and industry are increasingly making efforts to respond to these challenges, but that the measures taken are not sufficient and not applied in a consistent way throughout the EU.

The **EU Youth Strategy**<sup>72</sup> points out how the prospects of young people are determined by the opportunities which they were - or were not - offered in their childhood. The Council expressed its support for encouraging new and effective forms of participation of all young people in democratic life in Europe<sup>73</sup>

The Commission took a number of measures to promote a high quality of social protection provided to children in **child care institutions**. This included amongst other things the promotion of mutual knowledge between the Member States on this issue as well as funding several initiatives to promote the de-institutionalisation process. This does not, however, replace the responsibility of Member States, which have sole responsibility for the administration of child-care institutions.

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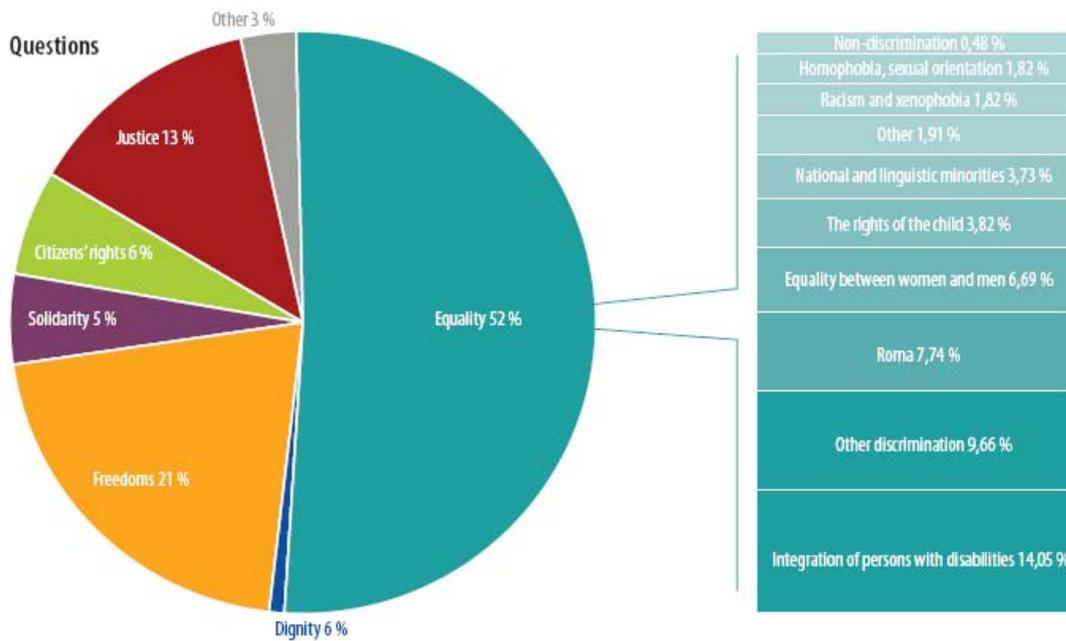
<sup>69</sup> These Member States are: Belgium, the Czech Republic, France, Greece, Ireland, Italy, the Netherlands, Portugal, Romania, and the United Kingdom. In addition, there is a type of child alert system in place in Germany, but it is operated solely by an NGO.

<sup>70</sup> The Commission submitted a Proposal on the accession of the Russian Federation. See: COM(2011) 911 final, available at: [http://eur-lex.europa.eu/Result.do?T1=V5&T2=2011&T3=911&RechType=RECH\\_naturel&Submit=Search](http://eur-lex.europa.eu/Result.do?T1=V5&T2=2011&T3=911&RechType=RECH_naturel&Submit=Search). In addition, the Commission also prepared proposal on the accession of other countries which joined the Hague Convention in recent years, see: COM(2011)916( Morocco) ; COM(2011) 912 final (Albania); COM(2011) 915 final (Singapore); COM(2011) 917 final (Armenia) COM(2011) 909 final (Seychelles); COM(2011) 908 final (Andorra); COM(2011) 904 final.

<sup>71</sup> Report from the Commission: Application of the Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity and of the Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and online information services industry - protecting children in the digital world, COM(2011) 556 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0556:EN:NOT>

<sup>72</sup> Communication from the Commission: An EU Strategy for Youth – Investing and Empowering: A renewed open method of coordination to address youth challenges and opportunities, COM(2011) 200 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0200:FIN:EN:PDF>

<sup>73</sup> Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on encouraging new and effective forms of participation of all young people in democratic life in Europe, 2011/C 169/01, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:169:0001:0005:EN:PDF>



## 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.

The EU is bound by the **UN Convention on the Rights of Persons with Disabilities** since 22 January 2011. This is the first time that the EU has become party to an international human rights treaty. This implies that the rights enshrined therein need to be implemented and respected by the EU in its legislative actions as well as its policy-making, to the extent of its competences.

The Commission continued the preparation of the setting up of the EU framework for promoting, protecting and monitoring the rights in the Convention by consulting relevant stakeholders and organised a Work Forum on the implementation of the UN Convention in the EU, providing for exchanges of good practices between the Member States.

The European Parliament<sup>74</sup> and the Council<sup>75</sup> endorsed the **European Disability Strategy**<sup>76</sup>, which empowers women and men with disabilities so they can enjoy their full rights and benefit fully from their participation in society. The Strategy sets out the framework of action for the Commission in the field of disability and also represents the framework to implement the UNCPRD at EU level.

Progress was made in ensuring that **disability rights are reflected in legislative acts**. Measures in favour of persons with disabilities and with reduced mobility are included in the new Regulations on passenger rights covering maritime and inland waterways transport and bus & coach transport. Moreover, disability issues are also present in some of the most important legislative proposals of the Multi Annual Financial Framework for 2014-2020 such as the new Rights and Citizenship Program<sup>77</sup> and the new Programme for future Structural Funds<sup>78</sup>. The Charter provides that the

<sup>74</sup> European Parliament Report: Mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2011-0263&language=EN>

<sup>75</sup> Council conclusions: Support of the implementation of the European Disability Strategy 2010-2020, 17.6.2011, available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/lsa/122819.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/122819.pdf)

<sup>76</sup> Communication from the Commission: European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, COM(2010) 636 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:EN:PDF>

<sup>77</sup> Proposal for a Regulation establishing for the period 2014 to 2020 the Rights and Citizenship Programme, COM (2011) 758 final, available at: [http://ec.europa.eu/justice/newsroom/files/1\\_en\\_act\\_part1\\_v5\\_frc\\_en.pdf](http://ec.europa.eu/justice/newsroom/files/1_en_act_part1_v5_frc_en.pdf)

<sup>78</sup> Information on the EU Cohesion Policy 2014-2020 is available at: [http://ec.europa.eu/regional\\_policy/what/future/proposals\\_2014\\_2020\\_en.cfm](http://ec.europa.eu/regional_policy/what/future/proposals_2014_2020_en.cfm)

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.

**Access City Award**

The Austrian city of Salzburg won the European prize for making cities more accessible to people with disabilities. The annual honour recognises efforts to improve accessibility in the urban environment and to foster equal participation of people with disabilities. The European Commission commended Salzburg's long-standing commitment, coherent approach and excellent results in improving accessibility, achieved with the direct participation of people with disabilities.

## 4. Solidarity

*Workers' right to information and consultation within the undertaking*

*Right of collective bargaining and action*

*Right of access to placement services*

*Protection in the event of unjustified dismissal*

*Fair and just working conditions*

*Prohibition of child labour and protection of young people at work*

*Family and professional life*

*Social security and social assistance*

*Health care*

*Access to services of general economic interest*

*Environmental protection*

*Consumer protection*

- New rules on European Works Councils increased the effectiveness of employees' transnational information and consultation rights.
- New legislation was adopted on the application of patients' rights in cross-border healthcare. This clarifies the rights of the patients to reimbursement of healthcare received in another Member State.
- Citizens, Members of the European Parliament and representatives of trade unions expressed concern over the relocation or restructuring of companies. Such decisions fall primarily within the managerial prerogative, which should fully respect the requirements provided for by EU law to inform and consult employees' representatives in good time and in any case before the employer takes a decision to close the undertaking or to effect collective dismissals.
- The protection of consumers was strengthened through the adoption of new rules on online purchases. The Commission pursues a rigorous enforcement policy to make sure that the protection granted by different EU rules on consumer protection is effectively guaranteed in national laws.

## Workers' right to information and consultation

The Charter 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.

The new legal framework for **European Works Councils** entered into force for Member States<sup>79</sup>. The changes aim to ensure increased effectiveness of employees' transnational information and consultation rights. After having assisted Member States in the implementation process, the Commission opened infringement proceedings against the Member States which did not adopt the required transposing measures within the determined deadline. The Commission also issued information material to promote awareness about the rights and opportunities created by the new framework.

The Commission set up an ad-hoc working group which brings together representatives of governments and social partners and commissioned a study to assess, in both quantitative and qualitative way, the social and economic benefits and costs related to **EU rules on employees' information and consultation at national company level**.

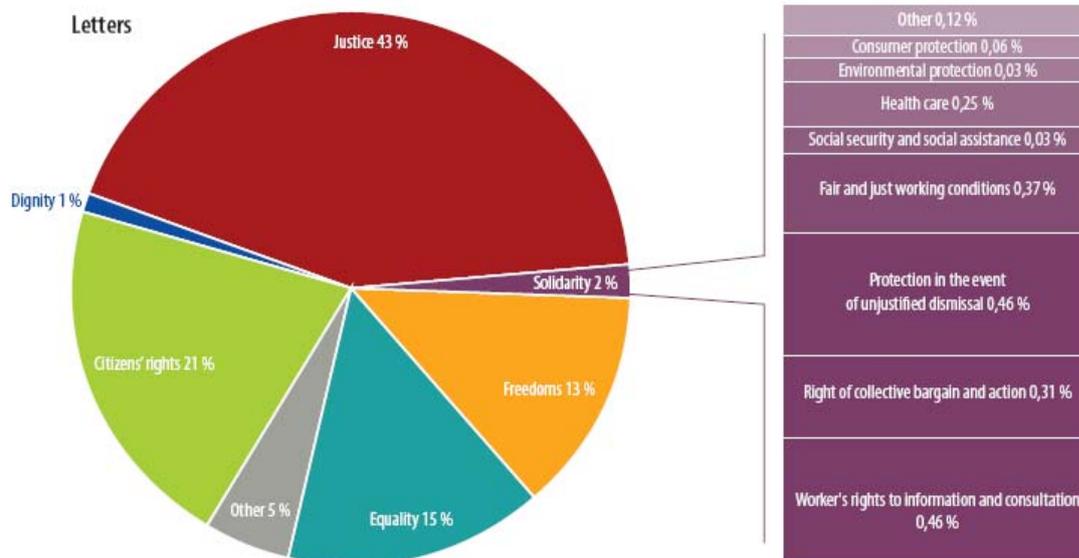
**Seagoing workers** are excluded or may be excluded, if Member States so decide, from the EU provisions that grant workers the right to information and consultation. Following the consultation of the European social partners on this matter, the Commission is now assessing the economic and social impacts of different policy options, including the suppression of the exclusions.

### **Relocation or restructuring of a company**

The Commission received several parliamentary questions and inquiries from MEPs, citizens and trade unions on the relocation or restructuring of a company. The decision to relocate or restructure a company falls primarily within the managerial prerogative. However, employers have to respect the requirements provided for by EU law that provides in particular for employees' representatives to be informed and consulted in good time and in any case before the employer takes a decision to close the undertaking or to effect collective dismissals. It is for the competent national authorities and in particular the courts to ensure the correct and effective application of these provisions and to guarantee that employers fulfil their duties in each particular case.

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<sup>79</sup> Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 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. 28–44.



## Right of collective bargaining and action

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<sup>80</sup>. Member States remain, of course, bound by the provisions of the Charter, including the right to strike, in instances where they implement EU law.

The Commission is currently preparing the revision of the legislative framework on the **posting of workers** in the context of the provision of services. In line with the Single Market Act<sup>81</sup>, the Commission will present two legislative proposals: a Directive aimed at improving and reinforcing the transposition, implementation and enforcement in practice of the Posting of Workers Directive, which will include measures to prevent and sanction any abuse and circumvention of the applicable rules, together with a Regulation aimed at clarifying the exercise of freedom of establishment and the freedom to provide services alongside fundamental social rights.

The Commission launched a searchable database on **transnational company agreements** and worked with Member States and social partners to secure a more frequent use of such types of agreements. These agreements are the fruit of transnational negotiations at corporate level and cover situations located in the different countries where the European/multinational companies operate or which are affected by corporate decisions. So far, the Commission's services have recorded some 215 transnational company agreements and joint texts in 138 companies employing together over 10 million employees.

### Competences of the Commission as regards strike actions

<sup>80</sup> Article 153(5) of the Treaty on the Functioning of the EU (TFEU) stipulates that it does not apply to the right to strike.

<sup>81</sup> Communication from the Commission: Single Market Act, Twelve levers to boost growth and strengthen confidence, Working together to create new growth", COM(2011) 206 final, available at: [http://ec.europa.eu/internal\\_market/smact/docs/20110413-communication\\_en.pdf](http://ec.europa.eu/internal_market/smact/docs/20110413-communication_en.pdf)

The Commission received several complaints alleging that the measures taken by the Spanish government with regard to air traffic controllers flagrantly violated their right to collective bargaining and action. In particular, following unsuccessful negotiations between the competent social partners in view of the renewal of a collective agreement, Spain adopted a law regulating the working conditions of the Spanish air traffic controllers. Confronted with a strike, it declared a state of emergency to break it.

The Commission replied that there is no EU law which prohibits Member States from introducing, through national laws, changes to practices previously applied under collective agreements. Nor is there any specific EU law regulating the right of association or the right to strike. In these circumstances, there did not seem to be any link with any EU legislation in that case. It is therefore for the competent authorities, including the courts, to assess the legality of the eventual restrictions on the exercise of these rights, and to enforce the relevant national legislation with due respect to the applicable international obligations of the Member States.

## Fair and just working conditions

The Charter guarantees that every worker has the right to working conditions which respect his or her 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**<sup>82</sup>. This framework was further enhanced with the Commission's proposal for new EU rules on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields)<sup>83</sup>.

The Commission published a Report on the implementation of the **Working time Directive**<sup>84</sup> and reviewed in a separate document implementing legislation taking into account the social partners rules and rulings of the Court of Justice regarding organisation of Working Time<sup>85</sup>. On 15 November 2011, the social partners at European level decided to negotiate amongst themselves with the aim of reviewing the aforementioned Directive, in accordance with Article 155 of the Treaty on the Functioning of the European Union<sup>86</sup>.

### Case law on working time

The **European Court of Justice** explicitly referred to the EU Charter, which states that every worker is entitled to an annual period of paid leave, in deciding that airline pilots are

<sup>82</sup> The central piece is the Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, p. 1-8, which lays down general principles on the protection of workers' health and safety. Several specific directives cover a number of specific risks, e.g. exposure of workers to biological and chemical agents at work, noise, work at the construction sites, manual handling of loads, etc. Another important piece of legislation covers working time and regulates issues such as minimum daily and weekly rest periods, breaks, maximum weekly working time, night work and annual leave.

<sup>83</sup> Proposal for a Directive of the European Parliament and of the Council on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields), COM(2011) 0348 final, available at: [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!DocNumber&lg=EN&type\\_doc=COMfinal&an\\_doc=2011&nu\\_doc=0348](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=EN&type_doc=COMfinal&an_doc=2011&nu_doc=0348)

<sup>84</sup> Report of the Commission: on implementation by Member States of Directive 2003/88/EC ('The Working Time Directive'), COM(2010) 802 final, available at: <http://www.ec.europa.eu/social/BlobServlet?docId=6420&langId=en>

<sup>85</sup> Commission Staff Working Paper: Detailed report on the implementation by Member States of Directive 2003/88/EC concerning certain aspects of the organisation of working time ('The Working Time Directive'), SEC(2010) 1611 final, available at <http://www.ec.europa.eu/social/BlobServlet?docId=6426&langId=en>

<sup>86</sup> They enjoy autonomy in these negotiations, for which 9 months is allowed by the Treaty, and will inform the Commission of the results achieved by early September 2012.

entitled to be paid at their normal rate of remuneration during the 4 weeks' minimum paid annual leave required by EU rules<sup>87</sup>. The case focused on whether airplane pilots are entitled, during their annual leave, only to the maintenance of their basic salary or also to other components, such as the supplementary payment for the time spent away from base.

#### **Citizen enquiries on maximum working time**

Citizens submitted complaints to the Commission alleging that national laws or practices excluded certain workers from the protection of the limits to maximum working time, minimum daily and weekly rests, or minimum periods of paid annual leave. In some cases, the Commission asked Member States to explain how their laws or practices complied with EU law. Several Member States informed the Commission that they were changing their national law so as to comply with EU law; in other cases the Commission warned that it would refer a case to the Court of Justice if the Member State did not do so.

**The EU Agency for Fundamental Rights** examined the legal and practical challenges facing EU Member States as they strive to guarantee migrants' fundamental rights and proposes ways to incorporate those rights into the policies, laws and administrative practices that affect migrants in irregular situations<sup>88</sup>. The Agency reported that an estimated 1.9 to 3.8 million irregular migrants were staying in the EU in 2008, according to the European Commission-funded *Clandestino* project. Because of their irregular migration status they are vulnerable to exploitation and abuse in the workplace. They also often face legal and practical barriers in getting access to basic services, such as healthcare, education and access to justice.

### **Social security and social assistance**

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. Member States are free to determine the details of their social security systems, including which benefits shall be provided, the conditions of eligibility, how these benefits are calculated, as well as how much contribution should be paid. European rules ensure that the application of the different national legislations respects the basic principles of equality of treatment and non-discrimination. They guarantee that migrant EU workers are treated alike with the national workers and that the application of the different national legislations does not adversely affect them.

The **Commission continued to monitor the application of EU rules on social security coordination** to ensure that people moving across borders within the EU do not lose their entitlements to benefits. For instance when dealing with a claim for unemployment benefits, institutions must take into account periods of insurance completed in other Member States if this is necessary for the entitlement to the benefit. For people working and residing in different Member States, EU law determines where they have to pay their social security contributions and which country is responsible to provide them healthcare or pay family benefits.

Further discussion in the context of the negotiations on the proposals for Directives on **third-country seasonal workers** and **intra-corporate transferees** took place in the Council and in the European Parliament. The Commission continues to defend the right of third-national seasonal workers to equal treatment with nationals of the admitting Member State in respect of social security rights, as well as fair treatment of intra-corporate transferees and their family members. In particular, the Commission made the point that Member States cannot restrict third country nationals' right to

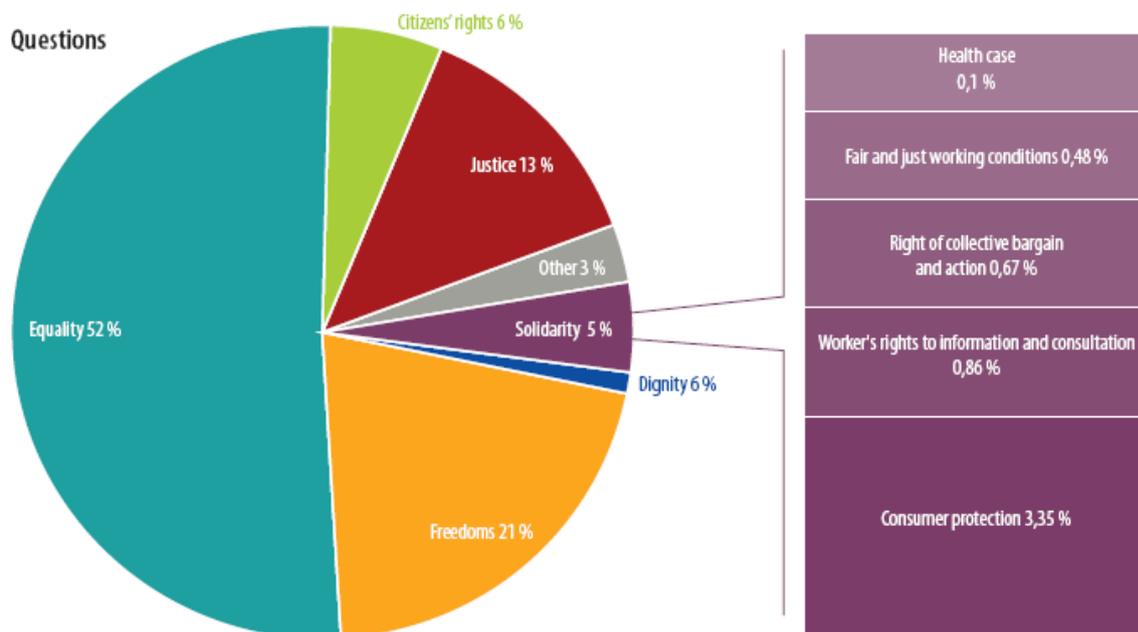
<sup>87</sup> ECJ, Case C-155/10, *Williams v British Airways*, 15.9.2011.

<sup>88</sup> EU Agency for Fundamental Rights Report – "Fundamental rights of migrants in an irregular situation in the European Union", November 2011, available at: [http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub-migrants-in-an-irregular-situation\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-migrants-in-an-irregular-situation_en.htm)

receive social security benefits that are based on contributions made as this would be contrary to the right to property.

A new Directive was adopted on migrant workers granting equal treatment to legally residing third-country workers in a number of fields in particular working conditions, social security, recognition of diplomas, tax benefits, education but also freedom of association<sup>89</sup>.

The **European Court of Human Rights** delivered its ruling in a case that concerned the refusal of Austria to grant an old-age pension from the pension fund for lawyers<sup>90</sup>. The Court stated that, even though the right to a pension is not, as such, guaranteed by the Convention, the right to a pension which is based on employment can in certain circumstances be assimilated to a property right. The Court held that entitlement to a social benefit is linked to the payment of contributions, and, when such contributions have been made, an award cannot be denied to the person concerned.



## Health care

The Charter recognises 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.

New legislation was adopted on the application of **patients' rights in cross-border healthcare**. The new rules clarify the rights of patients to reimbursement of healthcare received in another Member State<sup>91</sup>.

**The EU Agency for Fundamental Rights Report** documented the legal, economic and practical obstacles that migrants in an irregular situation face in accessing healthcare in 10 EU Member States and proposes a number of ways to improve this access<sup>92</sup>. The Agency found in particular that the risk

<sup>89</sup> Directive 2011/98/EU on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:343:0001:0009:EN:PDF>

<sup>90</sup> ECJ, *Austria vs. Klein*, application n° 57028/00, 3.3.2011.

<sup>91</sup> Directive 2011/24/EU on the application of patients' rights in cross-border healthcare, available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:088:0045:0065:EN:PDF>

<sup>92</sup> EU Agency for Fundamental Rights Report, "Migrants in an irregular situation: access to healthcare in 10 European Union Member States", October 2010, available at: [http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub\\_irregular-migrants-healthcare\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub_irregular-migrants-healthcare_en.htm)

of detection and deportation prevents migrants in an irregular situation from seeking healthcare, even in those countries where it is legally available, and suggests disconnecting healthcare from immigration control policies.

## Consumer protection

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.

The protection of consumers was strengthened through the adoption of **new EU rules on online purchases**<sup>93</sup>, which require that consumers must be given essential information before they order goods or services in particular during a visit of a sales representative at their home or place of work or by a means of distance communication, such as online purchases. In addition, consumers have the right to withdraw from such contracts within 14 days. The new EU rules on consumer rights furthermore ban pre-ticked boxes, internet cost traps and charges of which the consumer are not informed in advance.

The **Common European Sales Law**, proposed by the Commission in October 2011, sets out an optional sales law regime based on a high level of consumer protection when purchasing goods, digital content and related services across borders on the basis of this optional law regime. For example, the Commission proposal would afford consumers a free choice of remedies in case they buy a defective product – even several months after a purchase. Thus, consumers would be able to request the repair or replacement of the product, to withhold payment, to reduce the price, to terminate the contract and/or to claim damages.

The Commission pursued a rigorous **enforcement policy** to make sure that the protection granted by different consumer protection directives is effectively guaranteed in national laws. Several Member States improved their rules on the sale of consumer goods following intervention by the Commission. The Commission opened infringement proceedings against Member States which were late in transposing EU legislation on timeshares. Further to this, the large majority of Member States adopted the necessary implementing measures.

### Specific complaints in the area of consumer protection

The Commission received numerous **letters from the general public** regarding for example faulty products, timeshare, package travel, insurance, online marketing of products and services as well as unfair commercial practices in a number of sectors. As the Commission cannot intervene in disputes between consumers and operators, it informed citizens on the applicable EU rules and referred them to the relevant national authorities, European Consumer Centres or consumer protection organizations. Where there were doubts about the compliance of national law with EU legislation on consumer protection or the adequacy of its enforcement, the Commission contacted the relevant Member States.

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<sup>93</sup> Directive 2011/83/EU 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, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF>

## 5. Citizens' rights

*Right to vote and to stand as a candidate at elections to the European Parliament*

*Right to vote and to stand as a candidate at municipal elections*

*Right to good administration*

*Right of access to documents*

*European Ombudsman*

*Right to petition*

*Freedom of movement and of residence*

*Diplomatic and consular protection*

- The Commission initiated action such that **EU citizens can become members of or found a political party in whichever Member State they reside.**
- This is an important dimension for the effective application of the **right to stand as a candidate in elections** for the European Parliament and at municipal level.
- The **rigorous enforcement policy pursued by the Commission** to achieve the full and correct transposition and application of the EU free movement rules across the European Union produced substantial results. The majority of Member States amended their legislation or announced amendments aimed at ensuring full compliance with these rules. The Commission continued working with the remaining countries to tackle outstanding issues, launching infringement proceedings where needed.
- Concrete steps were made to ensure that EU citizens can benefit from diplomatic and **consular protection** when they travel abroad. The Commission proposed new EU rules and launched a dedicated website on consular protection.

## Right to vote and stand as a candidate at elections

The Charter guarantees the right of every EU citizen to vote in the European elections in whatever Member State they reside. The Charter also provides for the right of EU citizens to vote and to stand as candidates at municipal elections in the Member State in which they reside.

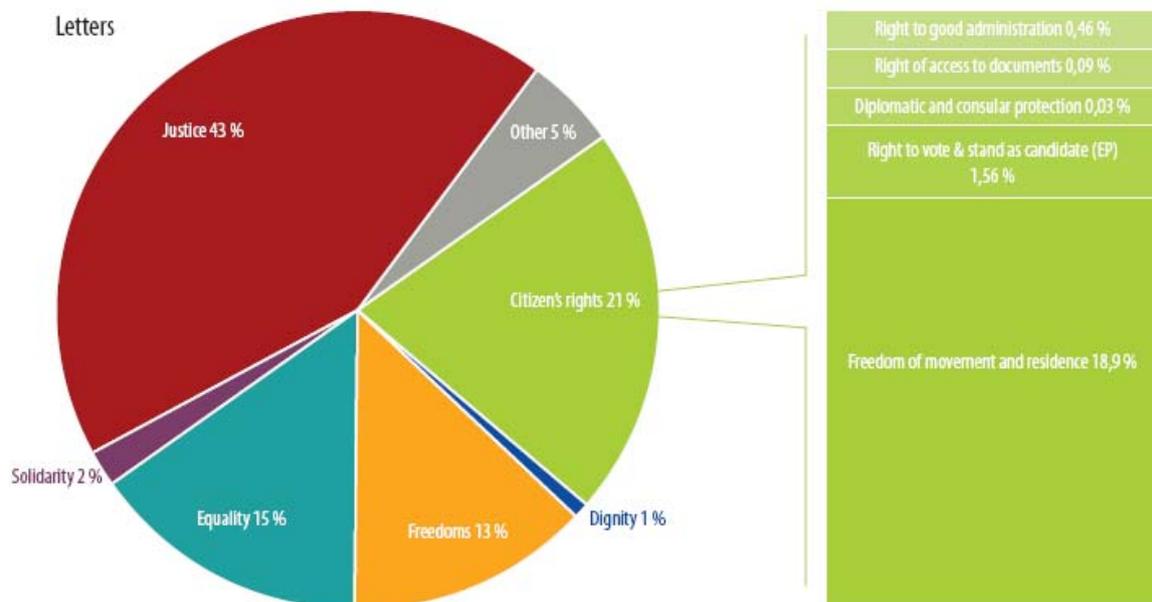
Negotiations were resumed at the request of the Commission with a view to amending **EU legislation on the participation of EU citizens in European elections**. The objective is to make it less burdensome for EU citizens to stand as candidates in the next European Parliament elections.

The Commission initiated action with a view to ensuring that **EU citizens can become members of or found a political party in whichever Member State they reside**. An EU citizen who is limited as regards the possibility to get fully involved in activities of political parties suffers a disadvantage when standing in elections, compared to national citizens who enjoy that right.

### Reform of the Finnish electoral legislation

The Commission engaged a dialogue with the Finnish authorities concerning the implementation of the right of EU citizens to vote and stand in municipal and in European elections in whichever Member State they reside, under the same conditions as nationals of that State.

Further to this dialogue, the Finnish authorities announced that they would annul the legal requirement to collect the signed support from at least 5 000 Finnish nationals to found a political party.



## Right to good administration

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

A huge number of **enquiries are addressed by citizens to the Commission**, whether by phone, e-mail or correspondence. The Commission commits itself to answering them in the most appropriate manner and as quickly as possible. The general rule applied in the Commission is that every letter is registered and, with the exception of those that are unreasonable, repetitive or abusive, should receive a reply within 15 working days from the date of receipt of the letter. The Commission also takes care that replies are sent in the language of the author of the correspondence, provided that it was written in one of the official language of the Union. For complaints and enquiries by citizens on the application of EU law, the Commission uses (“Complaint Handling”), an IT tool for registering and managing this specific kind of correspondence.

25 Member States are now using the operational **EU Pilot application**, which was put in place by the Commission in 2008 to provide quicker and better answers to questions raised by citizens or businesses and solutions to those problems arising in the application of EU law.

The right to good administration is relevant in different areas of EU law. One of them is **competition**, where the Commission is entrusted with making sure markets function properly. The European Commission adopted a package of measures aimed at increasing interaction with parties in antitrust proceedings and strengthening the mechanisms for safeguarding parties' procedural rights<sup>94</sup>. They give parties a clear picture of what to expect at different stages of an antitrust investigation and increase their ability to interact with the Commission services. If parties have a dispute about their procedural rights they can refer the matter to the competition Hearing Officer, who will have an enhanced role throughout the entirety of antitrust proceedings. Parties will also be able to call upon the Hearing Officer in the investigative phase of antitrust investigations if they feel that they should not be compelled to reply to questions that might force them to admit to an infringement.

## Right of access to documents

Article 42 of the Charter 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 also guaranteed in the Treaty on the functioning of the European Union and has been implemented through Regulation 1049/2001, which defines the principles and limits governing the right of access to documents.

In 2011, the Commission received almost 6500 **requests for access to documents**, compared to about 6000 in 2010. As in the past, 4 out of 5 requests were granted at the initial stage. In 2011, the Commission received 162 confirmatory applications, leading to a new assessment and a final decision of the Commission. 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 around half the cases.

In 2011, the European Ombudsman closed 17 complaints concerning the right of access to Commission documents, making a critical or a further remark in eight cases.

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<sup>94</sup> Commission Notice on Best Practices in proceedings concerning articles 101 and 102 TFEU, OJ C 308, 20.10.2011, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:308:0006:0032:EN:PDF> ; Terms of Reference of the Hearing Officer, OJ L 275, 21.10.2011, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:275:0029:0037:EN:PDF> ; Best Practices on submission of economic evidence; published on the Website of the European Commission, available at: [http://ec.europa.eu/dgs/competition/economist/neven\\_deconinck\\_best\\_practices.pdf](http://ec.europa.eu/dgs/competition/economist/neven_deconinck_best_practices.pdf)

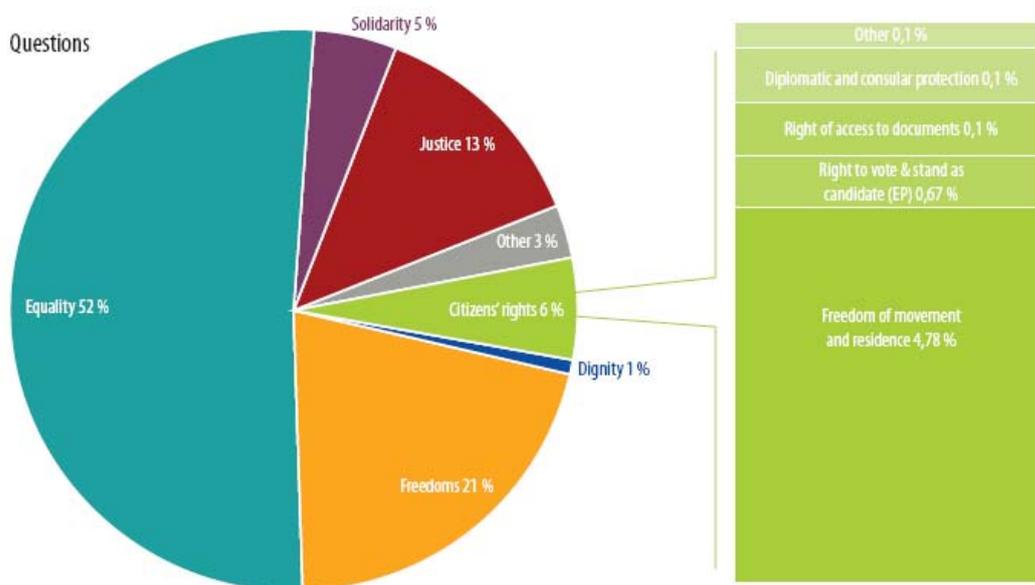
In the past year, the Court of Justice of the European Union delivered an important judgment on access to internal documents, including legal opinions. The ruling concerned a non-legislative matter, where the relevant procedure had already been closed<sup>95</sup>.

The General Court handed down six judgments, three of which are worth mentioning: the *Batchelor*<sup>96</sup> and *IFAW*<sup>97</sup> cases concerning access to documents originating from Member States and the *LPN*<sup>98</sup> regarding access to documents in ongoing infringement proceedings.

## Right to refer to the 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 cases of maladministration in the activities of the EU institutions, bodies, offices and agencies, with the exception of the Court of Justice acting in its judicial role.

Over 22 000 individuals were helped directly by the European Ombudsman in 2011. More than 80% of the enquiries could be handled through an interactive guide available on the website of the European Ombudsman. As regards the other enquiries, some were handled by a member of the European Network of Ombudsmen<sup>99</sup> (about 1300 cases) or by the European Ombudsman (about 700 cases), when the complaints concerned maladministration in the institutions and bodies of the European Union.



## Freedom of movement and residence

<sup>95</sup> ECJ, Case C-506/08, *Kingdom of Sweden v European Commission and MyTravel Group*, 21.07.2011.

<sup>96</sup> GC, Case T-250/08, *Batchelor v. Commission*, 24.5.2011.

<sup>97</sup> GC, Case T-362/08, *IFAW v. Commission*, 13.1.2011.

<sup>98</sup> GC, Case T-29/08, *LPN v. Commission*; 9.9.2011.

<sup>99</sup> The European Network of Ombudsmen consists of over 90 offices in 32 European countries. The Network includes the national and regional ombudsmen and similar bodies of the Member States of the European Union, the candidate countries for EU membership, and certain other European countries, as well as the European Ombudsman and the Committee on Petitions of the European Parliament. The national ombudsmen and similar bodies in the Network have each appointed a liaison officer to act as a point of contact for other members of the Network.

The Charter guarantees the right of every EU citizen to move and reside freely, in the respect of certain conditions, within the territory of the Member States. This fundamental right is also included in the Treaty on the Functioning of the EU.

The **rigorous enforcement policy pursued by the Commission** with a view to achieving the full and correct transposition and application of the EU free movement rules across the European Union produced substantial results. The majority of Member States amended their legislation or announced amendments aimed at ensuring full compliance with these rules. The Commission continued working with the remaining countries to tackle outstanding issues, launching infringement proceedings where needed to ensure that all European citizens and their family members can make full use of their right to free movement in all 27 Member States.

The main issues raised in those **12 infringement proceedings** included the incorrect or incomplete transposition and implementation of provisions in EU law regarding the rights of entry and residence for family members of Union citizens, including same-sex partners, the conditions for issuance of visas and residence cards for third-country national family members and the safeguards against expulsions.

The **Commission further pursued an intensive dialogue with the Dutch authorities** regarding the plans announced by the latter in April 2011 on labour migration. In a letter of 18 May 2011 to the Dutch authorities, the Commission raised a number of concerns as to the compatibility of some of the planned measures with EU law on the free movement of EU citizens and workers in combination with the non-discrimination principle. Several bilateral exchanges and the reply of the Dutch authorities of 14 November 2011 allowed for the clarification of a significant number of issues. The Commission is pursuing its dialogue with the Dutch authorities on the outstanding issues with a view to ensuring that any planned measures will be fully compatible with EU law.

The **Commission engaged in a dialogue with the Danish authorities** regarding their plans to strengthen customs controls at the Danish borders with a view to fighting cross-border crime. The intention of the Danish government was to set up permanent customs presence at the borders, build new facilities and use comprehensive video surveillance and police assistance. The Commission made it clear that Member States may not carry out systematic controls of goods and persons at their internal borders. The Commission was particularly concerned that these strengthened border controls may result in obstacles to the free movement of EU citizens within the European Union. These plans were eventually withdrawn by the new government that took office in Denmark in October 2011.

The Commission also contacted the Danish authorities regarding amendments to the Danish Aliens' Act that entered into force in July 2011. These aim to introduce stricter rules on the expulsion of aliens, including EU citizens, and raise serious concerns of compatibility with the Free Movement Directive. The Commission will not hesitate to make use of the powers conferred to it by the Treaty should the Danish reply be deemed unsatisfactory.

**Conditions of entry and residence of third-country national family members of EU citizens having exercised their right to free movement**

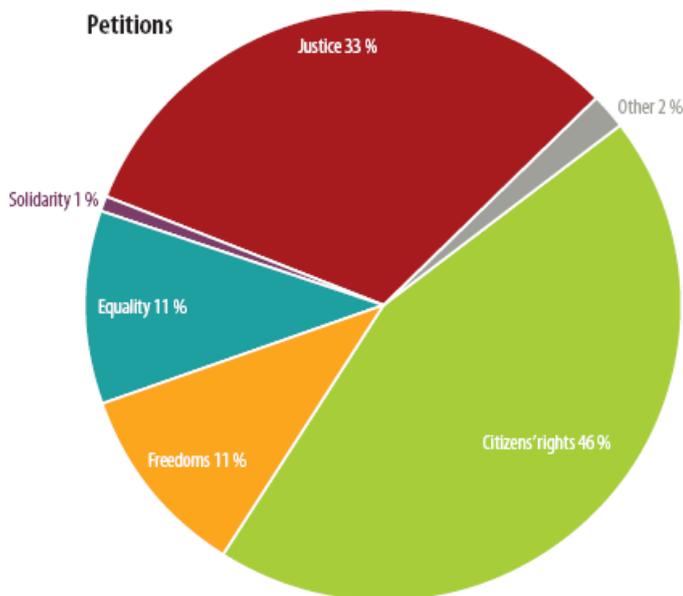
The Commission received several complaints on this issue. In some cases, which appeared to be isolated instances of incorrect application of the EU rules, the Commission suggested that the individuals address themselves to the SOLVIT network, which is designed to provide quick and efficient assistance in such cases. Other cases were solved following the Commission's bilateral contacts with Member States on the transposition of the EU rules on free movement, whilst a number of them were raised in the context of the global infringement procedures launched by the Commission in the course of the year.

**Principle of non-discrimination**

The Commission dealt with a number of complaints from EU citizens residing in Malta who alleged that they could not benefit from reduced water and electricity tariffs available to Maltese citizens, in violation of the non-discrimination principle on grounds of nationality. The Commission has contacted the Maltese authorities with a view to resolving this issue.

The Commission launched a discussion to identify political options which would prevent **EU citizens from losing their political rights as a consequence of exercising their right to free movement**<sup>100</sup>. According to the legislation of several Member States, their nationals are disenfranchised if they live in another Member State for a certain period of time, with the consequence that they are not able to participate in any national elections, neither in the Member State of origin nor in the Member State of residence, and are not represented in national parliaments or in the Council of the European Union. This puts citizens who have exercised their right to free movement in a less favourable position than those staying in their home countries.

In June 2011, the Commission wrote letters to the Member States concerned and invited them to contribute to a common reflection. On the basis of the replies received, the Commission intends to promote a broad debate on how to strengthen the rights to democratic participation of EU citizens exercising their right to free movement within the EU.



## Diplomatic and consular protection

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.

**The Commission proposed new EU rules on consular protection<sup>101</sup> for citizens of the Union abroad,** further to previous analysis of the state of play in this area<sup>102</sup>. The Commission proposal includes measures to give concrete meaning to this right by clarifying its scope of application, easing cooperation between consular authorities, including on financial matters, and also providing for cost-

<sup>100</sup> Disenfranchisement was identified as an obstacle encountered by EU citizens as political actors in the EU Citizenship report 2010 "Dismantling obstacles to EU citizens' rights" of 27 October 2010 (COM/2010/603)- action 20.

<sup>101</sup> Proposal for a Council Directive on consular protection for citizens of the Union abroad, COM(2011) 881 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0881:FIN:EN:PDF>

<sup>102</sup> Communication from the Commission: Consular protection for EU citizens in third countries: State of play and way forward, COM (2011) 149 final, available at: [http://ec.europa.eu/justice/citizen/files/com\\_2011\\_149\\_en.pdf](http://ec.europa.eu/justice/citizen/files/com_2011_149_en.pdf)

effectiveness by exploiting synergies with existing EU tools and resources. The proposal enhances the fundamental right to consular protection under the same conditions as for nationals, by clarifying the content of this right, by facilitating the necessary cooperation and coordination procedures and by ensuring effective implementation and compliance. The inclusion of non-EU family members in its scope of application strengthens the right to family life as well as the rights of the child. Clearer responsibilities and improved burden-sharing in crisis situations would ensure non-discrimination also in times of crisis when fundamental rights are at stake. Furthermore, the principles of non-discrimination, life and integrity of the person and the right of defence and to a fair trial are being reinforced.

One of the ways of making the right to consular protection effective is through providing information. The Commission launched a **dedicated website on consular protection**<sup>103</sup> – the one-stop shop, in the 23 official EU languages, on the basic information for the citizens of the Union on consular protection in third countries. The website provides the addresses of the consular or diplomatic missions in non-EU countries to which citizens may turn to for protection, access to the travel advice services of the EU Member States and to EU legal background information on the matter.

## Union citizenship

According to EU law, every person holding the nationality of a Member State is a citizen of the Union. Citizenship of the Union is additional to national citizenship and does not replace it.

The **Commission proposed to designate 2013 as the European Year of Citizens**<sup>104</sup>. The objective of the year will be to raise Union citizens' awareness about the rights granted to them by the treaty, including their right to participate in the democratic life of the Union. In addition, it will raise Union citizens' awareness on how they can benefit from EU rights and policies, including by stimulating their participation in civic *fora* on Union policies and issues. The European Year will also seek to launch a debate about the impact and potential of the right to free movement, as an inalienable aspect of Union citizenship, in particular in terms of strengthening societal cohesion and mutual understanding between Union citizens and the bond between citizens and the Union.

**The Court of Justice of the EU** ruled that Member States are not allowed to take measures depriving Union citizens of the genuine enjoyment of the substance of their rights as Union citizens. The Court held that an irregular migrant in a Member State whose minor dependent children are nationals of that country must be allowed to reside and work there<sup>105</sup>. In its reasoning the Court explained that a refusal to do so would deprive children of the genuine enjoyment of the substance of their rights as Union citizens, because it would force them to leave the territory of the European Union. The Court further explained that this even applies when the children have never exercised their right to free movement within the territory of the Member States.

In another case<sup>106</sup>, the Court highlighted the specific and exceptional nature of the situations in which this rule can apply. The Court clarified that it applies only where the EU citizen is forced to leave the territory of the Union as a whole (and not only the territory of the Member State of which he/she is a national). Moreover, merely the fact that the EU citizen wishes to reside together with a third-country national family member is not sufficient to accept that he/she will be forced to leave the Union territory if the family member is not granted a residence right. The national authorities or courts should assess in every case whether a refusal to grant a residence right would undermine the right to protection of family life - in light of Article 7 of the Charter of Fundamental rights, in situations covered by Union law, and in light of Article 8 of the European Convention on Human Rights, where Union law is not applicable.

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<sup>103</sup> Available at: <http://ec.europa.eu/consularprotection>

<sup>104</sup> The proposal stems from the 2010 EU Citizenship Report (action 23) which underlined the importance to strengthen citizens' awareness of their EU citizenship status, their rights and their meaning in their daily lives. Proposal for a Decision of the European Parliament and of the Council on the European Year of Citizens (2013), COM(2011) 489 final, available at: [http://ec.europa.eu/citizenship/pdf/1\\_en\\_act\\_part1\\_v5.11.08.11.pdf](http://ec.europa.eu/citizenship/pdf/1_en_act_part1_v5.11.08.11.pdf)

<sup>105</sup> ECJ, Case C-34/09, *Ruiz Zambrano*, 8.3.2011.

<sup>106</sup> ECJ, Case C-256/11, *Dereci and others*, 15.11.2011.



## 6. Justice

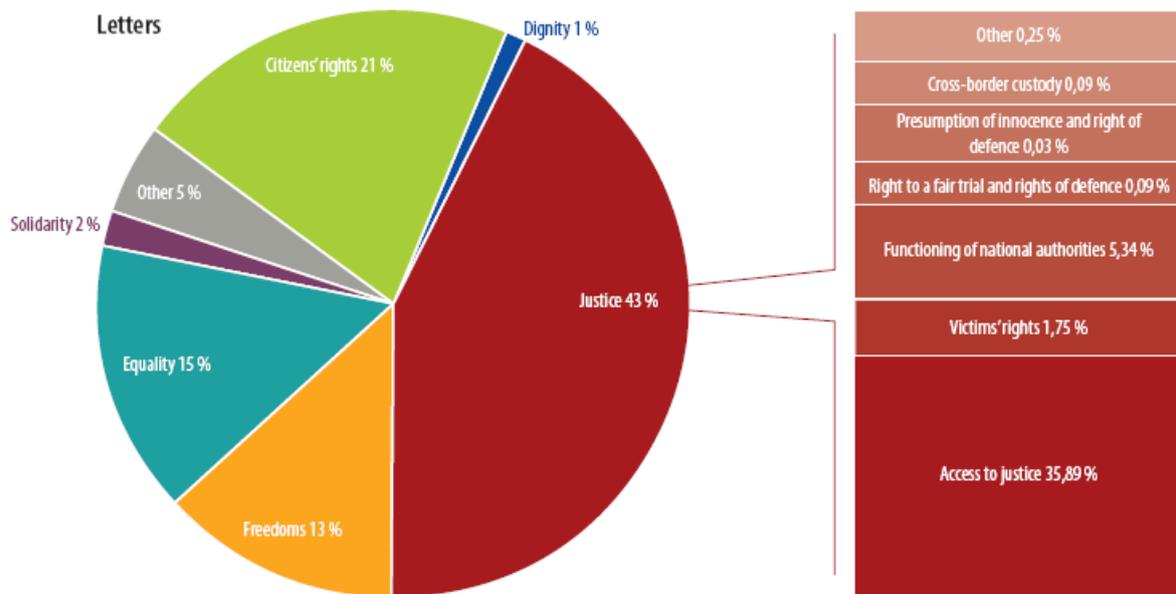
*Right to an effective remedy and to a fair trial*

*Presumption of innocence and right of defence*

*Principles of legality and proportionality of criminal offences and penalties*

*Right not to be tried or punished twice in criminal proceedings for the same criminal offence*

- The Commission proposed new laws establishing minimum standards on the rights, support and **protection of victims of crime**. This proposal would guarantee that victims are treated with respect, for example during the investigation phase and that police, prosecutors and judges are trained in how to properly deal with them.
- The Commission set clear and ambitious targets for expanding **training for legal practitioners** in Europe on how to apply European law, including fundamental rights. An independent, well-trained and efficient judiciary is essential for a functioning justice area and single market in Europe.
- **The procedural rights of suspects have been strengthened.** New EU rules ensure that suspects of a criminal offence are informed about their rights in a language that they understand. The Commission also proposed to strengthen the procedural safeguard on access to lawyer, as of the first stage of police questioning and throughout criminal proceedings.
- The Commission started work to put in place a coherent and consistent **EU Criminal Policy** by setting out how the EU should use criminal law to ensure the effective implementation of EU policies.



### Right to an effective remedy and right to a fair trial

The Charter provides that when EU rules give a right to a person, he or she can go before a court in case this right is violated. This protection is called a **right to an effective remedy**, because it provides to individuals a legal solution decided by a tribunal when an authority used EU law in a wrong way. The right to effective remedy guarantees judicial protection against violations of any EU rule which grants rights to people. It plays therefore a key role for ensuring the effectiveness of all EU law, ranging from social policy, to asylum legislation, competition, agriculture, etc.

The right to an effective remedy was the most quoted rights in the decisions of the Court of Justice referring to the Charter. It has been mentioned in a third of these decisions and different fields of EU law, such as: competition, freedom of establishment, agriculture and fisheries, asylum.

The Commission paid particular attention to the developments related to the new *Hungarian Constitution and its implementation*. In the June plenary session of the European Parliament, the Commission underlined that the constitution of every Member State should reflect and comply with the European values of freedom, democracy, equality, rule of law, human dignity and respect of human rights, including the rights of persons belonging to minorities, without discrimination, as laid down in Article 2 of the Treaty.

On 12 December, the Commission<sup>107</sup> expressed its concerns to the Hungarian Minister of Justice regarding certain provisions of the draft legislation implementing the new Constitution which could affect the independence of the judiciary. The letter also explained that the principle of judicial protection enshrined in Article 47 of the Charter of Fundamental Rights of the EU guarantees the right to an effective remedy before a 'court' or a 'tribunal' as defined in Union law. The Court of Justice stressed in this context that independence and impartiality are amongst key criteria which must be satisfied by the body concerned in order to be considered as 'tribunal'.

The Hungarian authorities adopted the legislation on the judiciary without taking into account the Commission's legal concerns. The Commission decided, as guardian of the Treaties, to take action against a number of new provisions in Hungarian legislation, namely on the independence of the data protection authority and on the discriminatory impact of the mandatory retirement age for judges, prosecutors and notaries. The Commission also sent an administrative letter requesting

<sup>107</sup> Vice-President Reding sent a letter to the Hungarian Minister of Justice.

further information on certain aspects of the new legislation which could affect the independence of the judiciary<sup>108</sup>.

The Commission proposed new laws establishing minimum standards on the rights, support and **protection of victims of crime**<sup>109</sup>. This proposal would guarantee that victims are treated with respect, for example during the investigation phase and that police, prosecutors and judges are trained in how to properly deal with them. Victims would be entitled to get information on their rights and their case in a way that they understand and Member States would have an obligation to set-up victim support services. The proposal pays special attention to vulnerable victims, such as children or victims of rape. To help protect victims of violence from any further harm by their attacker, the Commission is also proposing rules to ensure that victim who is guaranteed protection from the attacker can rely on this protection if he or she travels or moves to another EU country.

Member States that take part in the **Rome III Regulation on cross-border divorces** adopted in 2010 have pursued their preparations in view of its entry into force on 21 June 2012. The new legislation will give a choice as to which country's rules apply in case of divorce for couples with different nationalities, those living apart in different countries or those living together in a country other than their home country. Although this regulation does not directly concern access to justice, it can contribute to facilitating access to justice by improving legal certainty through defining which rules apply in such cases.

The Commission set clear and ambitious targets for expanding **training for legal practitioners** in Europe on how to apply European law, including fundamental rights<sup>110</sup>. An independent, well-trained and efficient judiciary is essential for a functioning justice area and single market in Europe. It caters for good and prompt judicial decisions strengthening predictability and legal certainty. As European law is part of everyday life, citizens and businesses want to know that they can count on a knowledgeable and well-trained judiciary across the Union enabling them to exercise their rights and get justice in a coherent manner, ensuring respect of their fundamental rights across the Union. Judges, lawyers and other legal practitioners need to know the rules to be able to apply EU law effectively.

The obligation laid down in the Visa Code<sup>111</sup> to **motivate the refusal of a visa by a Member State and the right of appeal** directly relate to the right to an effective remedy and to a fair trial. The Commission closely monitors the correct implementation by Member States of these provisions, which became applicable as from 5 April 2011, in particular by collecting and analysing information on the Member States' procedures put in place for appeal of decisions on refusal/revocation/annulment of a visa.

#### **Detention conditions**

The Commission received a number of letters from the general public on poor detention conditions due to prison overcrowding in national prisons or the placement of pre-trial detainees together with convicted prisoners.

While national governments are solely responsible for detention issues and prison management, it is the Commission's role to make sure judicial cooperation in the EU works and fundamental rights are respected when EU mutual recognition instruments – such as the European Arrest Warrant – are implemented.

<sup>108</sup> Press release of 17 January 2012 (IP 12/24). Available at:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/24&format=HTML&aged=0&language=EN&guiLanguage=fr>

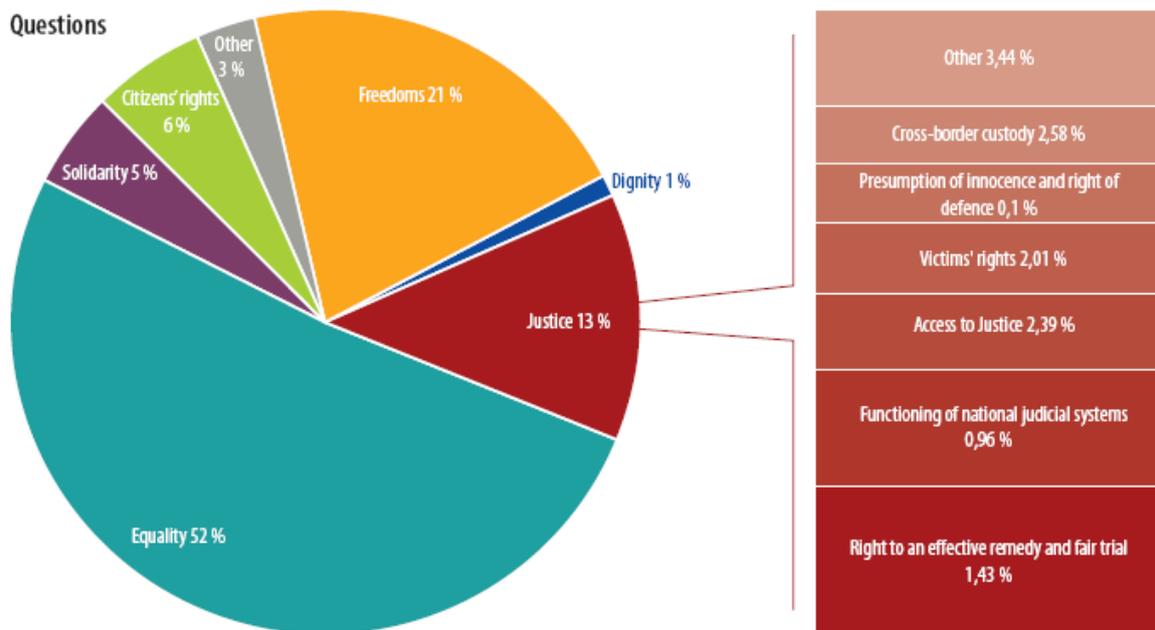
<sup>109</sup> Proposal for a Directive of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime, COM(2011) 275 final, available at:

[http://ec.europa.eu/justice/policies/criminal/victims/docs/com\\_2011\\_275\\_en.pdf](http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_275_en.pdf)

<sup>110</sup> Commission Communication: Building trust in EU-wide justice, a new dimension to European judicial training, COM(2011) 551 final, available at: [http://ec.europa.eu/justice/criminal/files/2011-551-judicial-training\\_en.pdf](http://ec.europa.eu/justice/criminal/files/2011-551-judicial-training_en.pdf)

<sup>111</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L 243, 15.9.2009

With regard to detention, Europeans must have confidence that they will be treated to similar standards of protection no matter where they are in the European Union. For this reason, the Commission presented a Green Paper asking 10 questions on how to strengthen mutual trust in the field of detention<sup>112</sup>. Detention conditions and periods vary widely between EU countries.



### Presumption of innocence and right of defence

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 rights of the defence of anyone who has been charged shall be guaranteed.

**Procedural rights of suspects** have been strengthened, in particular as regards the right to an effective remedy and to a fair trial and the rights of defence. More particularly, the European Parliament and the Council adopted a new set of rules ensuring that the suspects of a criminal offence are informed about their rights in a language that they understand<sup>113</sup>. Anyone arrested will have to be informed about their rights by a document called a Letter of Rights.

The Commission submitted a proposal securing **access to a lawyer** from the first stage of police questioning and throughout criminal proceedings. The proposal also grants the accused or suspected the right to contact their embassy or consulate as well as their family or employer<sup>114</sup>. While the responsibility for conducting the investigation and any questioning will of course remain with the police, the lawyer ought to be able to attend any questioning by the police or other authorities and to ask questions or request clarification whenever needed. Authorities would have to guarantee the confidentiality of meetings between the lawyer and the suspect.

Upon request of the European Parliament, **the EU Agency for Fundamental Rights** addressed the issue of fundamental rights standards for an instrument involving mutual recognition of investigation

<sup>112</sup> Commission Green Paper: Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention, COM(2011) 327, available at:

[http://ec.europa.eu/justice/policies/criminal/procedural/docs/com\\_2011\\_327\\_en.pdf](http://ec.europa.eu/justice/policies/criminal/procedural/docs/com_2011_327_en.pdf)

<sup>113</sup> Directive on the right to information in criminal proceedings, [OJ], [date], available at: []

<sup>114</sup> Proposal for a Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, COM(2011) 326 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0326:FIN:EN:PDF>

orders<sup>115</sup>. It provides an overview of existing European standards, with particular emphasis on elements of fair trial, based on the Court of Justice of the European Union and the European Court of Human Rights case law.

## Principles of legality and proportionality of criminal offences and penalties

Criminal law measures are fundamental rights-sensitive. They unavoidably interfere with individual rights, be it those of the suspect, of the victim or of witnesses. Ultimately, they can result in deprivation of liberty and therefore require particular attention by the legislator. This is why the Charter of Fundamental Rights provides important limits for EU action in this field.

**The Commission set out the legal framework under the Lisbon Treaty for the adoption of EU criminal law measures<sup>116</sup>.** This is a first step in the efforts to put in place a coherent and consistent EU Criminal Policy by setting out how the EU should use criminal law to ensure the effective implementation of EU policies. In this respect, the Commission issued a first proposal on EU rules on criminal sanctions for insider dealing and market abuse<sup>117</sup>. Furthermore, preparations in view of new EU legislation on EU financial interests by criminal law are ongoing.

The Commission pursued a rigorous enforcement policy in respect of the transposition by Member States of EU rules on **criminal sanctions for environmental offences** and the legislation on **criminal sanctions for pollution from ships**. Infringement procedures were initiated against Member States who had not transposed this legislation on time. Failure by Member States to implement these EU wide rules into their national law makes it impossible to have common minimum criminal law rules for serious breaches of EU legislation on the protection of the environment and against ship-source pollution. Such EUwide rules are essential to prevent loopholes which could otherwise be exploited by perpetrators of environmental crimes.

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<sup>115</sup> EU Agency for Fundamental Rights, "Opinion on the draft Directive regarding the European Investigation Order (EIO)", available at: [http://fra.europa.eu/fraWebsite/research/opinions/op-eio\\_en.htm](http://fra.europa.eu/fraWebsite/research/opinions/op-eio_en.htm)

<sup>116</sup> Commission Communication: Towards an EU Criminal Policy - ensuring the effective implementation of EU policies through criminal law, COM(2011) 573 final, available at: [http://ec.europa.eu/justice/newsroom/files/com\\_2011\\_573\\_en.pdf](http://ec.europa.eu/justice/newsroom/files/com_2011_573_en.pdf),

<sup>117</sup> Proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) , COM (2011) 654 final, available at: [http://ec.europa.eu/internal\\_market/securities/docs/abuse/COM\\_2011\\_651\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/abuse/COM_2011_651_en.pdf)

## Appendix

### Overview of 2011 ECJ case law which directly quotes the Charter or mentions it in its reasoning:

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right	Grand Chamber?
Skareby v Commission	F-95/09	08/02/2011	Employment - EU Civil Service Tribunal	Justice	Right to an effective remedy and fair trial	N
Association belge des Consommateurs Test-Achats and Others	C-236/09	01/03/2011	Discrimination - services	Equality	Equality between men and women	Y
Areva and Others v Commission	T-117/07	03/03/2011	Competition	Justice	Right to an effective remedy and fair trial	N
Peñarroja Fa	C-372/09	17/03/2011	Freedom of establishment	Justice	Right to an effective remedy and fair trial	N
AJD Tuna	C-221/09	17/03/2011	Agriculture and fisheries	Justice	Right to an effective remedy and fair trial	N
ThyssenKrupp Nirosta v Commission	C-352/09 P	29/03/2011	Competition	Justice	Principles of legality and proportionality of criminal offences and penalties	Y
Italy v EESC	T-117/08	31/03/2011	Discrimination - employment	Equality	Cultural, religious and linguistic diversity	N
Visa Europe and Visa International Service v Commission	T-461/07	14/04/2011	Competition	Citizens' rights	Right to good administration	N
Deutsche Telekom	C-543/09	05/05/2011	Communications	Freedoms	Protection of personal data	N
McCarthy	C-434/09	05/05/2011	Freedom of movement	Citizens' rights	Freedom of movement and of residence	N
Runevič-Vardyn and Wardyn	C-391/09	12/05/2011	Freedom of movement	Equality	Non-discrimination	N
Arkema France v Commission	T-343/08	17/05/2011	Competition	Justice	Right not to be tried or punished twice in criminal proceedings for the same criminal offence	N
Elf Aquitaine v Commission	T-299/08	17/05/2011	Competition	Justice	Presumption of innocence and right of defence	N

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right	Grand Chamber?
Fuji Electric v Commission	T-132/07	12/07/2011	Competition	Justice	Right to an effective remedy and fair trial	N
General Technic-Otis v Commission	T-141/07	13/07/2011	Competition	Justice	Presumption of innocence and right of defence	N
Fuchs	C-159/10	21/07/2011	Discrimination - employment	Freedoms	Freedom to choose an occupation and right to engage in work	N
Beneo-Orafti	C-150/10	21/07/2011	Agriculture and fisheries	Justice	Right not to be tried or punished twice in criminal proceedings for the same criminal offence	N
Kelly	C-104/10	21/07/2011	Discrimination - employment	Freedoms	Protection of personal data	N
Nagy	C-21/10	21/07/2011	Agriculture and fisheries	Equality	Equality before the law	N
Kingdom of Sweden v European Commission and MyTravel Group	C-506/08	21/07/2011	Competition	Citizens' rights	Right of access to documents	N
Samba Diouf	C-69/10	28/07/2011	Social policy - asylum	Justice	Right to an effective remedy and fair trial	N
Patriciello	C-163/10	06/09/2011	Criminal law - EU immunity	Freedoms	Freedom of expression and information	Y
Hennings	C-297/10	08/09/2011	Discrimination - employment	Equality	Non-discrimination	N
Prigge and Others	C-447/09	13/09/2011	Discrimination - employment	Equality	Non-discrimination	Y
Williams and Others	C-155/10	15/09/2011	Employment	Solidarity	Fair and just working conditions	N
Gueye	C-483/09	15/09/2011	Criminal law - victims	Freedoms	Respect for private and family life	N
Evropaïki Dynamiki v EIB	T-461/08	20/09/2011	Communications	Justice	Right to an effective remedy and fair trial	N
De Nicola v EIB	F-55/08 DEP	27/09/2011	Employment - EU Civil Service Tribunal	Justice	Right to an effective remedy and fair trial	N

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right	Grand Chamber?
Association belge des consommateurs test-achats Commission	T-224/10	12/10/2011	Competition	Solidarity	Consumer protection	N
Solvay v Commission	C-109/10 P	25/10/2011	Competition	Citizens' rights	Right of access to documents	Y
Aragonesas Industrias y Energía v Commission	T-348/08	25/10/2011	Competition	Justice	Right to an effective remedy and fair trial	N
Garenfeld	C-405/10	10/11/2011	Environment	Justice	Principles of legality and proportionality of criminal offences and penalties	N
Dereci and Others	C-256/11	15/11/2011	Freedom of movement	Freedoms	Respect for private and family life	Y
Lindner	C-327/10	17/11/2011	Civil law	Justice	Right to an effective remedy and fair trial	N
KHS	C-214/10	22/11/2011	Employment	Solidarity	Fair and just working conditions	Y
Sison v Council	T-341/07	23/11/2011	Common foreign and security policy - terrorism	Justice	Right to an effective remedy and fair trial	N
Asociación Nacional de Establecimientos Financieros de Crédito	C-468/10	24/11/2011	Data protection	Freedoms	Protection of personal data	N
Scarlet Extended	C-70/10	24/11/2011	Communications	Freedoms	Right to property	N
Painer	C-145/10	01/12/2011	Civil law	Freedoms	Freedom of expression and information	N
KME Germany and Others v Commission	C-389/10 P	08/12/2011	Competition	Justice	Right to an effective remedy and fair trial	N
Chalkor v Commission	C-386/10 P	08/12/2011	Competition	Justice	Right to an effective remedy and fair trial	N
KME and Others v Commission	C-272/09 P	08/12/2011	Competition	Justice	Right to an effective remedy and fair trial	N
Nycomed Danmark v EMA	T-52/09	14/12/2011	Regulatory powers	Freedoms	Freedom to conduct a business	N
Cicolav Regione Siciliana	C-482/10	21/12/2011	National administrative law	Citizens' rights	Right to good administration	N
X	C-507/10	21/12/2011	Criminal justice	Justice	Right to an effective remedy	N
N.S. and others	C-411/10 & C-493/10	21/12/2011	Asylum	Dignity	Prohibition of torture	Y
<b>EN</b> European Commission v. Austria	C-28/09	21/12/2011	56 Environment	Freedoms	Respect for private and family life	Y

