

"Implementing the EU Charter of Fundamental Rights"

Barbara Nolan, Head of the European Commission's Representation in Ireland to the IHRC/Law Society of Ireland conference on "Emerging Human Rights Issues", Dublin 20 November 2010

Thank you very much for your kind invitation to deliver an address to this important and timely conference.

National Human Rights Institutions such as the IHRC play an key role in human rights architecture, through, for example, monitoring compliance, conducting research, initiating preventive measures, and awareness-raising.

Well-functioning national human rights institutions also have a positive effect on the EU legal system and I know the IHRC and the European Group of National Human Rights Institutions have good cooperation with the EU's Fundamental Rights Agency.

(The new legally binding EU Charter of Fundamental Rights)

With the entry into force of the Lisbon Treaty (1 December 2009), we have achieved an historic breakthrough. The EU Charter of Fundamental Rights became legally binding on the EU's institutions and on Member States when they are implementing EU law. Now we need to put the Charter into practice.

The Commission has recently published (on 19 October 2010) a **Communication setting the "Strategy for the effective**

implementation of the Charter of Fundamental Rights by the European Union". This communication seeks to ensure that the rights enshrined in the Charter are effectively implemented for the benefit of all people living in the EU and that the Union should be **exemplary** in this respect.

The Charter is a reflection of our common European values and constitutional heritage. It entrenches all the rights found in the European Convention on Human Rights as well as other rights and principles from the constitutional traditions of EU Member States, the case law of the European Court of Justice and other international instruments. **It is supposed to be the compass for all EU policies and should be applied to all phases of the policy life cycle:** from the very beginning of drafting legislation, to the negotiations in Council and Parliament as well as the implementation and application of EU acts by the Member States.

For instance, already at the exploratory phase for new initiatives, the Commission consultation papers should **flag possible fundamental rights implications of future initiatives.** Such upstream awareness will encourage interested parties, including National Human Rights Institutions, to provide relevant contributions, indispensable to the preparation of new initiatives.

Member States are also required to fully comply with all the rights in the EU Charter of Fundamental Rights whenever they implement EU law or otherwise act within the scope of the Treaties. The Commission will use all the tools available under the Treaty to ensure compliance with the Charter, and will certainly not shy away from starting infringement proceedings whenever necessary.

(The Annual Report on the application of the Charter)

The Commission will publish an **Annual Report** on the application of the Charter by the EU and its Member States.

The report will monitor progress on the enforcement of the Charter in the areas where the Union has powers to act: showing how the Charter has been taken into account in concrete cases (such as when new legislation is proposed). The report will provide an opportunity for the European Parliament and the Council to hold a fully informed annual policy debate on fundamental rights on what has been done and what should be done in the future within the remit of EU powers.

The Commission will present how it has taken the Charter into account in the drafting of its initiatives and how the Charter has been applied by the Member States when implementing EU law. Here again, the Commission counts on the expertise and knowledge of the situation on the ground that National Human Rights Institutions in the EU are able to provide as they have unique insights into the everyday problems that exist on the ground.

The Fundamental Rights Agency will also play an important role by providing comparable and reliable data on the situation in the 27 Member States in the areas where the EU can act.

(Improving information for citizens)

Citizens should know where they can turn for assistance in cases of violations of fundamental rights. The strategy for the effective enforcement of the Charter proposes to improve information for citizens in that respect, in particular through the **Commission e-Justice portal in 2011**.

The Commission will explain when it can and cannot intervene on fundamental rights complaints where these are outside the scope of EU competence. The Charter does not establish a general power for the Commission to intervene in the area of fundamental rights. It can intervene only when EU law comes into play (for example, when EU legislation is adopted or when a national measure applies an EU law in a manner incompatible with the Charter). Member States have their own systems for

protecting fundamental rights through national constitutions and courts; **the Charter is not a replacement for them.** It is therefore in the first place up to national courts to ensure respect for fundamental rights.

(The EU's accession to the European Convention of Human Rights)

The Lisbon Treaty gives the EU the possibility to reconcile formally the coexistence of Europe's two supreme documents on fundamental rights – the Strasbourg Convention and the EU Charter. The negotiations surrounding the **EU's accession to the European Convention of Human Rights** are still ongoing, but once they are completed, the accession will complement the system to protect fundamental rights by making the European Court of Human Rights competent to review Union acts. This external judicial review should further encourage the Union to follow an ambitious policy for fundamental rights: the more the EU tries to ensure that its measures are fully compliant with fundamental rights, the less likely it is to be censured by the European Court of Human Rights.

To conclude, it is important that all EU institutions, authorities and interested parties join efforts in putting the Charter into practice. A legally binding Charter is not only an institutional event! It should be put in practice by all of us within the remit of our powers. In that respect, the Commission is convinced that the national human rights institutions have a key role to play.