Introduction to the Special Edition on Charter and ECHR anniversaries

Jim Clarken[*]

2025 marks a significant milestone: the 25th anniversary of the EU Charter of Fundamental Rights, having been proclaimed in Nice in December 2000. Initially adopted as a non-binding document, it became legally binding in December 2009 with the entry into force of the Lisbon Treaty. From that moment onwards, the Charter has shaped the legal culture of the European Union and also, to a certain degree, of its Member States. In addition to this notable anniversary, 2025 will also bear witness to the 75th anniversary of the European Convention on Human Rights – the Council of Europe's pendant to the EU's Charter. It is therefore a very timely moment to examine the role of these key bills of rights. Both are central to the development and maintenance of Europe's human rights culture, each in their own scope and role.

I am writing this foreword from the perspective of the EU Agency for Fundamental Rights (FRA), whose Management Board I currently chair. FRA is the independent EU fundamental rights expert body, mandated to offer expertise and assistance to EU institutions and bodies as well as to EU Member States on fundamental rights. Needless to say, the Charter plays a key role in this regard. The Agency has been working on, and for, the Charter for many years, carrying out data collection & analysis, documentation, technical assistance & capacity building, and awareness raising & commu-

[*] Chairperson, Management Board of the European Agency for Fundamental Rights.

nication activities. It has assisted the European Commission in preparing the Strategy to strengthen the application of the Charter of Fundamental Rights in the EU (European Commission, 2020), which was presented on 2 December 2020 and now, ahead of the 25th anniversary, is under review. To ensure that the Charter becomes a reality for all, the strategy sets out the direction of its implementation up until 2030. One of the key messages of the strategy is that application at national level matters. This message underpins the belief that human rights are most tangible at lower levels of governance.

From 2013 onwards, the Agency has been collecting Charter-related cases decided by national high courts.[1] The analysis appears annually in a dedicated chapter of FRA's annual fundamental rights report. Alongside national case law, the chapter also deals with the use of the Charter in the legislative process (for instance, examples of how the Charter was used in impact assessments of bills) and parliamentary debates. It also refers to promising practices regarding the use of the Charter at national level. Based on this evidence, the Agency warned, from a very early stage, that there might be a significant gap between the Charter's use at EU level – where the Charter was praised as "one of the most important achievements in the history of European integration" (Lenaerts, 2021, p. 1712) and its use at national level, which was described as "meagre, underwhelming, sporadic, rare, disappointing" (Bobek, Adams-Prassl eds), 2020, p. 559). Whereas at EU level, the Charter has, without doubt, led to a change of institutional culture, it has not yet fully entered the centre of attention of legal and political systems at national level. A look into the court room suffices to confirm this impression: the Court of Justice in Luxembourg has referred to the Charter in over 5000 judgments and orders, while national Courts rarely mention it, and when they do, it has a tendency

[1] For the agency's work in this field see FRA material and resources on the Charter at FRA material and resources on the Charter | European Union Agency for Fundamental Rights.

to be superficially used (on the use of the Charter see FRA, 2020b; FRA, 2018).

As FRA evidence shows, this is often due to a lack of knowledge and awareness of the Charter's existence, let alone its added legal value. According to the Agency's large scale fundamental rights survey, conducted in all EU Member States in 2019, there is only one single Member State – Czechia – where awareness of the EU Charter trumps awareness of the ECHR (FRA, 2020c, pp. 28 and 29). In every other country, people are far less aware of the Charter compared to the ECHR. On average in the EU27, 68% of the population is aware of the ECHR but only 53% of the Charter. This does not come as a surprise given that, in many countries, the ECHR has been in force for many decades already. The figures show that a new human rights catalogue needs times to develop traction in a legal and political system. However, what is more worrying is the FRA evidence confirming that the awareness of the added value of the Charter amongst legal practitioners is low.

It was famously said that the Charter is "easy to read, but difficult to understand" (Toggenburg, 2018, p. 21). And indeed, while the text of the Charter is concise, attractive and modern, legal practitioners remain hesitant when it comes to its application. The Agency identifies various factors that appear to limit the use of the Charter in legal practice.

Firstly, in contrast to international and national human rights norms, the Charter binds Member States only when they are "implementing Union law", i.e. when they are acting within the scope of EU law (Article 51 of the Charter). Assessing whether or not a specific case falls within the scope of EU law requires good knowledge of the extensive case law of the CJEU. To assist in capacity-building in this respect, the Agency has prepared online courses and a "Charter handbook" (FRA, 2020a) which is available in nearly all EU languages (FRA, 2020b, p. 19).

Secondly, the Charter distinguishes between rights and principles - without clarifying whether a provision is a right or a principle. Principles, according to Article 52(5), are "judicially cognisable" only when they have been implemented by "legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law". This can leave legal practitioners in doubt about the nature and legal value of many Charter provisions (*ibid.*).

Thirdly, the Charter is a relatively new instrument in a rather crowded field. Against this backdrop, legal practitioners may question why they should add a third layer of rights to those available in well-known national and international sources. At first sight and without specialised training, it may seem like more of the same (*ibid.*).

These are all hurdles preventing national actors from making the Charter a reality on the ground. But we should rebuke the pessimism these hurdles may evoke; there are certainly reasons to be optimistic. The Charter offers various drivers that can lead to a situation where Charter rights are regularly applied in legal practice. When it comes to the added value of the Charter, we can draw on many examples.

Firstly, the Charter is a source of supranational law. Being part and parcel of EU law, the Charter has a more direct and stronger effect at national level than international human rights law. The principle of primacy means that national law may not be applied in the given case or context if it is not fully consistent with the Charter. National or local judges and civil servants become, in some sense, EU judges or EU civil servants when acting within the ever-increasing scope of EU law. They have to make sure that national law does not violate the application of the Charter (FRA, 2020b, p. 6). Similarly, all EU legislation has to be in line with the Charter, given the Charter's rank of EU primary law (Article 6 TEU).

Secondly, the Charter increases the visibility of fundamen-

tal rights. Compared with the common principles of EU law, gradually derived from CJEU decisions since the 1960s, the Charter has the advantage of being a written catalogue of fundamental rights. This significantly increases their visibility and accessibility, and should inspire legal practitioners at national level, especially in respect of rights that their national constitutions do not guarantee by explicit provisions (*ibid.*).

Thirdly, the wording of the Charter is modern and more comprehensive than national and international law. Given that the Charter is a young instrument, it had the opportunity to take new developments into account. Certain Charter rights reflect this, for example, the right to consumer protection (Article 38) or the right to conduct a business (Article 16). The Charter combines civil and political rights with social and economic rights in a single legally binding text, which goes beyond the explicit wording of many Member States' constitutions (*ibid.*).

Fourthly, the Charter is EU-specific. As the EU's bill of rights, the Charter includes many rights that are specific to the EU. As such, they would not be included in national or international law. Examples include the right to petition the European Parliament (Article 44), the right to access EU documents (Article 42), the right to refer cases of maladministration to the European Ombudsman (Article 43) and the right to freedom of movement and residence (Article 45). Basically, the Charter is the catalogue to go to when EU citizens' rights are at stake (*ibid.*).

Against this background, it comes as no surprise that the "Charter momentum" is picking up speed both at EU and national level. At EU level, we have seen an increase of EU legislation and EU policy making in the field of fundamental rights over the last 25 years. The Directives on standards for equality bodies in the field of equal treatment and equal opportunities, the Directive on combating violence against women and domestic violence, the equal pay Directive, the Victims' Rights Directive, the Directive on combating the

sexual abuse and sexual exploitation of children and child pornography, the SLAPP ("Strategic lawsuits against public participation") directive, the Whistle-blower Directive, the Directive on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings and so forth are all examples in this regard. Not to mention the many and varied fundamental rights related policy initiatives that have been launched in recent years, including those laid down in EU strategies dealing with children, migrants, women, antisemitism, persons with disabilities, racism and so on. All in all, the Charter has contributed to making the EU a more solid human rights organisation (see in more detail Toggenburg, 2023).

Despite the aforementioned hurdles, we are seeing the Charter increasingly used at national level. This is mainly the case for the judiciary; examples of the Constitutional Courts in Austria and Germany are particularly interesting as they established the Charter as a constitutional standard against which national law is checked. National courts increasingly mention the Charter when referring cases to the CJEU – in 2024, 128 out of the 588 references for preliminary rulings note the Charter (FRA, 2025, p. 94). Governments and parliaments are embracing an increased awareness of the added value of the Charter, although FRA's criticism remains that more attention should be paid to the Charter in the legislative process when the legislator is acting in the scope of EU law. The Agency calls on Member States to enhance their efforts to promote the application of the Charter among all levels of public administration, including the subnational level. Equally, the Member States should provide awareness raising and training activities, using the 25th anniversary of the proclamation of the Charter as an opportunity (*ibid.*, p. 101).

Speaking of using anniversaries for political action, I come back to the 75th anniversary of the ECHR, in order to stress the strong relationship between the EU's and the Council of Europe's bills of rights. It might be more exciting to speak

of the two European human rights systems as competitors, but I rather see the two bills of rights as twins. Whereas the Charter adds value to the ECHR by adding socio-economic rights, opening up additional judicial routes, modernising the wording of European human rights law and improving the visibility of some entitlements, it also ensures that the EU system takes the ECHR into very serious consideration, despite not having yet acceded to the Convention. It is key in this regard to recall that Article 52(3) of the Charter establishes a legal obligation to read all Charter provisions that correspond to rights listed in the Convention in full accordance with its sister instrument - the ECHR. This all confirms that we are not celebrating two isolated anniversaries, one in Strasburg and one in Brussels/Luxembourg. The two anniversaries should be seen as celebrating one single European human rights space, underpinned by a strong legal footing. I believe it is in this spirit that this highly interesting special edition should be read.

I wish you all an inspiring read.

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