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Member States' best practices on the Charter

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France



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Government policies that promote the use and awareness of the Charter among the legislator, the administration, law enforcement bodies and the judiciary.

1. Ecole nationale de la magistrature (ENM, French National School for the Judiciary)

The Charter of Fundamental Rights is extensively covered by the National School for the Judiciary in initial and continuous training for French magistrates.

1.1.1. Initial training

As part of magistrates' initial training, the Charter of Fundamental Rights is referred to in thematic sessions covering, in particular, the guiding principles of civil proceedings, the best interests of the child and ethics and deontology for magistrates (Article 47).

Courses aimed at promoting contact and dialogue between magistrates and lawyers also provide opportunities to discuss Article 48 of the Charter.

The French National School for the Judiciary also offers a one-day training course on the Court of Justice of the European Union, during which the Charter of Fundamental Rights of the European Union is discussed. The instrument and its scope are presented during the introduction to the course. Workshops are subsequently organised. Trainee magistrates, divided into groups of 20, are asked to engage with the subject through practical case studies.

In addition, in 2019, a dedicated group activity was organised to celebrate the Charter's 20th anniversary since it became legally binding.

1.1.2. In-service training

Specific training courses dedicated to the Charter

Since 2019, special attention has been devoted to the Charter of Fundamental Rights to raise awareness among magistrates about the use of this tool.

In 2019, in addition to a training course dedicated to the 10th anniversary of the entry into force of the Charter, specific ad hoc training on the Charter and its handling of disputes was developed in partnership with the Faculty of Law of the Grenoble-Alpes University (Jean Monnet Chair). This one-day training course fulfilled several educational objectives: The presentation of the Charter and its contributions to the protection of fundamental rights and its practical application within the French legal order. In addition to a theoretical approach (morning), practical case workshops were planned, specifically in social matters and on European arrest warrants (afternoon). This session was also open to lawyers with a view to interprofessional training.

In 2020, distance training was introduced due to the pandemic. The training is divided into two stages: Participants had to learn about content (thematic course videos and documentation) on the ENM pedagogical platform, followed by a virtual classroom with practical cases, answers to sample questions and tests, as well as a debate among participants. This training brought together both magistrates and lawyers, with a view to achieving inter-professional cooperation, and trained around thirty people. The training course is intended to be adapted into face-to-face format as from 2021.

In 2021, training on the EU Charter of Fundamental Rights was integrated into the training session 'Current EU Case Law', constituting a study day modelled on those from previous years, with a focus on theory in the morning and practical case workshops in the afternoon. The session was held in a hybrid format. The existing educational videos on the Charter of Fundamental Rights of the EU on the 'Moodle' platform effectively supplemented the training.

In 2022, the 'Current EU Case Law' study day will be replaced by a conference held by the University of Grenoble / Paris Sorbonne I / ENM on 'The EU Charter of Fundamental Rights: Judicial and Administrative Practice'. The conference will be open to administrative court and ordinary court judges, lawyers and academics.

The Moodle course on the Charter of Fundamental Rights remains an introductory tool available to supplement the training.

Charter-related training in European law

The Charter of Fundamental Rights is also being studied as part of four courses in European law offered to magistrates in continuous training:

- The judiciary and European integration: This three-day training course is specifically devoted to the functioning of the European institutions and the current case law of the CJEU. Three lectures are devoted to the Charter ('The use of EU law in criminal proceedings', 'The Charter of Fundamental Rights of the European Union' and 'The reference for a preliminary ruling').
- The Court and the European Convention on Human Rights: This training course specifically focuses on the relationship between the Charter of Fundamental Rights and the European Convention for the Protection of Human Rights. It covers the respective case-law of the two courts, as well as those of the national supreme courts on the consistency of European case-law.
- The magistrate and the international environment: This session asks about the role of magistrates in the light of current developments in European and international law. The Charter of Fundamental Rights is discussed on this occasion as a European instrument that contributes to the prevalence of fundamental rights in the construction of the law.
- Conference cycle 'Justice and Freedom of Expression': Set up under the 'JUST FREE — 2020-2022' project funded by DG JUSTICE, this series of conferences, implemented since September 2020, takes the form of three seminars which address the limits of freedom of expression, the right of the public to be informed and the right to freedom of expression of magistrates in relation to the Charter of Fundamental Rights and the European Convention on Human Rights. An application supports all the conferences in this project.

2. National School of Prison Administration (École nationale de l'administration pénitentiaire)

The Charter of Fundamental Rights of the European Union is cited as a reference to and support for the teaching of prison staff in training, including in the fields of European protection of human rights and, more specifically, the rights of detainees.

On the occasion of the 10th anniversary celebrations for the Charter of Fundamental Rights, the National School of Prison Administration contributed to the promotion and better understanding of the Charter by means of a public-speaking competition, held in 2020 as part of the 48th group of trainee prison services directors and the 13th group of trainee prison rehabilitation and probation directors.

Tools that help better understand the Charter and when it applies

For practitioners (legislator, administration, law enforcement authorities, judiciary, legal practitioners)

Tools developed by the National School for the Judiciary

On its educational platform, the National School for the Judiciary provides judges in initial and continuous training with a thematic area and a teaching kit dedicated to the Charter of Fundamental Rights of the European Union (history, case-law research, etc.), referring in particular to the Charter tools developed by the European Union Agency for Fundamental Rights ([2018 Handbook of the Agency on the application of the Charter](#)).

For citizens

The network of Community Justice Centres (*des maisons de la justice et du droit*)

With 141 establishments throughout the country, the community justice centres are places where people are welcomed, listened to, guided and provided with free and confidential information on the rights and obligations of citizens. They provide a local judicial presence and contribute to crime prevention, support for victims and access to the law. The community justice centres can make use of the Charter, in particular in promoting access to the law for young people in educational activities aimed at schools.

Use and promotion of Charter tools developed by other EU countries or by other stakeholders in the EU

I — The Human Rights Defender (*Le Défenseur des Droits*)

a - Functioning

In France, the Human Rights Defender is an independent administrative authority set up by Organic Law No 2011-333 of 29 March 2011. It has been enshrined in the Constitution since its 2008 reform and its task is to deal with complaints falling within its five areas of competence: the defence of the rights and freedoms of users of public services, the defence and promotion of the best interests and the rights of the child, the fight against discrimination and the promotion of equality, respect for the ethics of persons performing security activities, and finally, guidance and protection of whistle-blowers.

Any natural or legal person who considers that his or her rights have been infringed may lodge a complaint directly through more than 500 delegates throughout the territory in more than 800 locations, or directly at headquarters by means of an internet form, or by a letter free of charge.

The Human Rights Defender has significant investigative powers. It may request explanations and the provision of any information relevant to the investigation and settlement of the dispute to any public or private organisation.

At the end of its investigation, the Human Rights Defender favours amicable settlement. Almost 80% of the settlements initiated by the institution are successful.

It may also adopt a decision by which it makes individual or general recommendations. When a case is brought before the courts, the Human Rights Defender may also make observations as *amicus curiae* in all courts. The Human Rights Defender, in parallel with its action to protect rights, develops a policy of promoting equality and access to rights.

The Human Rights Defender makes rather limited use of the Charter in so far as it is applicable only if the State implements EU law (Article 51 of the Charter). It must therefore be demonstrated at the outset, which is not always obvious. The Human Rights Defender can more easily invoke the European Convention on Human Rights and the case-law of the European Court of Human Rights, which is abundant, or the EU directives on discrimination.

However, it may be invoked by the Human Rights Defender, sometimes in addition to other treaty texts (such as the International Convention on the Rights of Persons with Disabilities or the European Convention on Human Rights). It sometimes uses the Charter in complaints concerning discriminatory situations, which is one of the

specific areas of intervention of the Human Rights Defender.

Here are some examples of decisions in which the Charter has been a useful legal lever for the Human Rights Defender's case.

Example 1: Refusal to allow an employee to terminate her parental leave early in favour of maternity leave

The Human Rights Defender received a complaint in which an employee was denied the possibility by her employer (a primary sickness insurance fund) of early termination of her parental leave in favour of maternity leave since she was pregnant after having had her first child [1].

When questioned by the Human Rights Defender, the employer acknowledged that the Court of Justice of the European Union had stated on three occasions that the refusal to allow an employee to terminate her parental leave in favour of maternity leave constitutes discrimination on grounds of sex [2].

However, it refused to follow that case-law on the ground that it had not been transposed into French law. Article L.1225-52 of the Labour Code provides for two situations in which an employer cannot refuse early termination of parental leave:

- the death of the child;
- or a significant decrease in household resources.

In so doing, the Labour Code does not exclude the possibility of early termination of parental leave for another reason, provided that the parties agree on that reason.

The Human Rights Defender therefore had to remind the primary sickness insurance fund that the prohibition of discrimination constitutes a public policy prohibition from which no employer may derogate. It therefore concluded that the refusal to terminate the complainant's parental leave prematurely in favour of maternity leave constituted discrimination on grounds of her sex. In that decision, the Human Rights Defender based its arguments in part on articles of the Charter of Fundamental Rights of the European Union:

Article 33 of the Charter, which guarantees 'the protection of the family and the reconciliation of family and professional life'. In this respect, the second paragraph of Article 33 provides that 'to reconcile family and professional life, everyone shall have (...) the right to paid maternity leave'.

Article 21 of the Charter provides for the prohibition of discrimination based on, inter alia, sex and Article 23 ensures equality between men and women in all areas.

This example shows that as soon as we are within the scope of EU law — which is the case here since we are within the scope of non-discrimination on the criterion of sex in employment and, more specifically, Directive 2006/54 — the Human Rights Defender can use the Charter and it is directly applicable in national law.

Example 2 — Impossibility for persons with disabilities to access promotional offers, available exclusively on a dedicated website for the sale of train tickets.

The Human Rights Defender received a complaint concerning the impossibility for persons with disabilities to have access to promotional offers, available exclusively on a website dedicated to the sale of rail tickets. The Human Rights Defender therefore concluded that this situation was the result of a discriminatory practice in the sense of both:

- The Regulation on rail passengers' rights and obligations, which states that 'a railway undertaking, ticket vendor or tour operator shall not refuse to accept a reservation or issue a ticket for a disabled person or a person with reduced mobility' [3];
- But also Article 21 of the Charter of Fundamental Rights;
- and finally French Law No 2008-496 of 27 May 2008.

The Human Rights Defender therefore recommended that the company managing the online ticket website should allow disabled persons to access all its promotional fares, including those for international travel. Here again, the Charter is used as a complementary and authoritative argument:

- It is complementary because there is no horizontal directive in EU law prohibiting discrimination in access to goods and services for persons with disabilities, and the Regulation on passengers' rights and obligations is rather limited, so Article 21 of the Charter states the main principles of non-discrimination, including disability in access to goods;
- and an authoritative argument to support recommendations and claims for compensation by stipulating direct applicability.

In addition, as part of its work to promote the rule of law and fundamental rights through its networks of counterparts (the European Network of Ombudsmen managed by the European Ombudsman; ENOC, which brings together the Children's Rights Defenders; Equinet, a network of anti-discrimination bodies in Europe; The informal IPCAN network of external and independent policing mechanisms; The informal NEIWA network to exchange views on the transposition of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons reporting violations of Union law),

The Human Rights Defender uses not only the European Convention on Human Rights, the relevant directives, but also, in quite a systematic manner, the Charter of Fundamental Rights. In the framework of these networks, the Human Rights Defender works very much with the European Agency for Fundamental Rights (FRA), which is the real vehicle for promoting the Charter in these fora.

b - Events

To mark 20 years of the Charter of Fundamental Rights of the EU, the European Commission Representation in France organised a conference bringing together a number of major stakeholders working to ensure the enforcement and application of the Charter.

In this context, Ms George Pau-Langevin, Deputy to the Human Rights Defender and vice-president in charge of the fight against discrimination and the promotion of equality, took part in the debate organised by the European Commission and the European Union Agency for Fundamental Rights (FRA) on Monday 7 December 2020.

Alongside Elise Barbé (Judge Referee of the Criminal Chamber of the Court of Cassation, Chairperson of the FRA Management Board) and Olivier Cousi (Chairman of the Bar Association of the Court of Paris), she spoke about the challenges involved in the application of the Charter in France and the measures needed for its full implementation. For further information on French initiatives aimed at raising citizens' awareness of the rights enshrined in the Charter, as well as on measures relating to the promotion and enforcement of the rights set out in the text, the recording of the conference is available via [this link](#).

II — The National Advisory Commission on Human Rights (Commission consultative nationale des droits de l'Homme)

The National Advisory Commission on Human Rights (CNCDDH) is the French national institution for the promotion and protection of human rights set up in 1947. It is an independent administrative authority (AAI), a State structure that provides the Government and Parliament with independent advice and proposals in the field of human rights, humanitarian law and action, and the observance of fundamental guarantees granted to citizens for the exercise of public freedoms. Composed of 64 personalities and representatives of civil society organisations, it reflects the diversity of opinions expressed in France on human rights issues and international humanitarian law. As part of its tasks, it warns the public and raises awareness among the general public. It also participates in education and training on the observance of human rights.

In 2018, the CNCDDH, in partnership with the European Agency for Fundamental Rights, produced a two-minute video presenting the tool:

[Two minutes to understand the Charter of Fundamental Rights - YouTube](#)

[Two minutes to understand the Charter of Fundamental Rights of the European Union - CNCDDH Website](#)

It should be noted that the Charter will be included in the new CNCDDH website under 'resources' with a descriptive window that could open and which it regularly refers to in its reports and opinions.

[1] Decision 2019-183 of 24 October 2019 concerning the refusal by her employer to allow an employee to terminate her parental leave prematurely in favour of maternity leave

[2] (CJEU, 20 September 2007, Case C-116/06 *Kiiski v Tampereen Kaupunki*; CJEU, 3rd ch., 13 February 2014, Case C-512/11, *YTN* and C-513/11, *DST*; CJEU, 1st Chamber, 8 May 2019 — No C-486/18).

[3] Article 19-2 of Regulation (EC) No 1971/2007 of 23 October 2007.

■ Last update: 20/04/2023

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