

## ***Article 51: scope for hope or too tight a right?***

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COMMITTEE ON PETITIONS

**PUBLIC HEARING**

**Taking Citizens' concerns seriously: broadening the scope of the EU Charter on Fundamental Rights (Article 51)?**

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- ***The nature of the EU:*** The point was raised as to whether the EU is a human rights institution. Looking at a variety of provisions in the EU Treaties and the EU's very own bill of rights, I do not think that the EU can be anything but a human rights organisation. Just as the Court of Justice can be nothing but a human rights court (like national constitutional courts which are, and have to be, human rights courts as well).
- ***EU competence:*** At the same time we have to realize that the EU's founding values are not only about human rights but also, for instance, about the rule of law. Therefore we have to take the EU competence limitations – very explicitly outlined in the EU treaties - very seriously.
- ***The Charter as a 'frustrating' instrument:*** The Charter is drafted in a 'competence-blind-manner', reminding the reader only towards the end of the document that it only applies in the context of EU law. The advantage of a text that does not put every one of its provisions under a sword of Damocles regarding its competence limitations is that the Charter builds a clear, concise, systematic text is both readable and accessible. But this beauty comes at a certain cost, as there is an obvious potential for frustration: not everything the Charter promises can be delivered by the EU in all contexts. In that sense, the Charter is "[easy to read but difficult to understand](#)".
- ***The Charter as an 'inspiring' instrument:*** Would it then not have been better to start off with Article 51 (the technical limitations) rather than with Article 1 (the solemn provision on human dignity)? Note in this regard that the first proposal for the Convention of 15 February 2000 indeed proposed to place a provision on the scope of the Charter in the Preamble or in Article 1. In line with a [speech our Director held](#) last week, I would reply in the negative. The Charter's role and purpose is not to manage expectations, but to drive a human rights momentum. We therefore need to distinguish between the Charter as a political and as a legal document. As national case law collected in the [Charterpedia](#) shows, national courts do indeed refer to the Charter also beyond the scope of EU law.

- ***The importance of PETI's role:*** PETI plays a very important role in the EU's fundamental rights landscape. Legally speaking, however, the fact remains that the Charter only applies within the scope of EU law. Nonetheless, the interpretation of what is "a matter which comes within the Union's activities" (relevant for the admissibility of a petition) is not necessarily the same as the meaning of "when implementing EU law" (relevant for assessing whether or not the Charter legally applies in a specific case). When PETI deals with petitions where the Charter does not apply, it can still play an important role of a catalyst and a guide to point the petitioner to the appropriate institutions, procedures or mechanisms at national (or international) level.
- ***The role of FRA:*** [The Agency](#) is not entitled to deal with individual complaints. It has no judicial function. Over two thirds of the Member States have an accredited National Human Rights Institution, but only some of them are mandated to deal with individual cases and/or complaints (e.g. the ombudsman institutions in FI, ES, PT, HU, BG). Such institutions can nevertheless play an important role in helping people to access justice. FRA has dealt with issues of access to justice from a research perspective and [identified hurdles](#) in accessing rights at national level. Other FRA reports have dealt with the question of how the [different layers of governance](#) and their procedures, mechanisms and standards best interact for the benefit of the individual.
- ***FRA's 'hands on' approach:*** At a very practical level, FRA has developed a 'knock-at-the-right-door-tool' called [Clarity](#). This is an interactive tool that helps individuals to find the right institution or organisation to deal with their fundamental rights concern. We have a commitment from the Member States and the COM to take over Clarity and integrate it into the e-Justice portal, translate it into all EU languages and extend it to as many MSs as possible. There is a [videoclip](#) available that shows how Clarity works.
- ***Ways forward:*** More could be done. All the institutions involved could join forces to make it easier for individuals to approach them in the context of their respective mandates. Rather than everyone having their own tools on their own websites to guide people on their respective mandate, there could be a one-stop-shop point of entry for individuals with fundamental rights concerns. A mapping exercise could be helpful in this regard that covers not only national but also international tools.