OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Constitutional Affairs

on the implementation of the Charter of Fundamental Rights of the European Union in the EU institutional framework (2017/2089(INI))

Rapporteur for opinion: Dennis de Jong
SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

– having regard to the Charter of Fundamental Rights of the European Union, in particular Articles 44 and 51 thereof;

– having regard to the study entitled ‘The interpretation of Article 51 of the EU Charter of Fundamental Rights: the dilemma of stricter or broader application of the Charter to national measures’, published in February 2016 by Policy Department C of its Directorate-General for Internal Policies;

– having regard to its resolution of 25 October 2016 on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights, in particular paragraph 20 thereof;

– having regard to its resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union, in particular paragraph 45 thereof;

A. whereas Article 6 of the Treaty on European Union (TEU) recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted in Strasbourg on 12 December 2007, which has the same legal value as the Treaties;

B. whereas in accordance with Article 51 of the Charter, its provisions are addressed, inter alia, to the institutions, bodies, offices and agencies of the Union; whereas Article 51(1) states that the provisions of the Charter are addressed to the Member States ‘only when they are implementing Union law’;

C. whereas Article 51(1) also states that the institutions and bodies of the Union ‘shall [...] promote the application’ of the Charter; stresses that the Charter is not merely a set of prohibitions, but that it should also be considered a tool for taking measures to ensure that its provisions are fulfilled effectively;

D. whereas Article 6 TEU also emphasises that fundamental rights, as guaranteed by the European Convention on Human Rights (ECHR), must constitute general principles of the Union’s law;

E. whereas Article 151 of the Treaty on the Functioning of the European Union (TFEU) refers to fundamental social rights such as those set out in the European Social Charter;

F. whereas its study of November 2017 on the implementation of the Charter of

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Fundamental Rights in the EU institutional framework\(^1\) considers, inter alia, the relevance of the Charter for the Commission’s activities under the Treaty Establishing the European Stability Mechanism (ESM Treaty) and in the context of the European semester; whereas little attention is being paid to the social rights set out in the Charter in the economic governance of the Union; whereas these rights must be considered genuine fundamental rights;

G. whereas the EU Agency for Fundamental Rights (FRA) has formulated a number of recommendations for the effective implementation of the Charter of Fundamental Rights in its opinions entitled ‘Improving access to remedy in the area of business and human rights at the EU level’\(^2\) and ‘Challenges and opportunities for the implementation of the Charter of Fundamental Rights’\(^3\);

1. States that the Charter of Fundamental Rights has to be applied with full respect for the ECHR, while also recognising the importance of the European Social Charter and the European Pillar of Social Rights, and calls on the Commission to speed up the accession procedure of the EU to the ECHR and to give greater priority to the examination of the possibility of the EU’s accession to the European Social Charter;

2. Urges the Commission to clarify the scope of Article 51 of the Charter of Fundamental Rights, since different interpretations add to the confusion and make the application of the Charter unclear and unsatisfactory\(^4\);

3. Calls on the Commission to provide Member States with guidance as to how fundamental rights should be taken into account when they implement Union law;

4. Stresses that Article 51(1) of the Charter calls for the promotion of the rights and principles set out therein and points to the link between Union values and the Charter, as well as with the Copenhagen criteria for the accession of third countries to the Union; regrets that so far the EU does not have at its disposal a comprehensive mechanism for the protection of democracy, the rule of law and fundamental rights, as advocated by Parliament in its resolution of 14 November 2018\(^5\), which would allow for the systematic screening of developments in the EU institutions and bodies and in the Member States that call for action to protect and fulfil the rights, freedoms and principles of the Charter; suggests, in particular, that the conditions set out in the Copenhagen criteria relating to fundamental rights not simply be used once as accession preconditions, but that Member States be periodically assessed against them;

5. Notes with concern that the Charter of Fundamental Rights only applies in Member States when implementing EU law and invites the different EU institutions to consider enhancing the scope of application of the Charter in the next revision of the Treaty;

\(^2\) FRA Opinion 1/2017, 10 April 2017.
\(^4\) See, for example, section 2.3 of FRA Opinion 4/2018 of 24 September 2018.
6. Calls on the Commission, the other EU institutions and Member States’ national and regional governments to regularly consult the FRA when fundamental rights are at stake; calls, furthermore, for the introduction within the framework of the European Semester of a compulsory assessment and review of Member States’ adherence to the provisions of the Charter;

7. Expresses its concern about the lack of systematic fundamental rights impact assessments preceding the adoption by the Commission of its legislative proposals and calls for the Commission, the Council and Parliament to hold independent and comprehensive compatibility checks and impact assessments of fundamental rights for each legislative proposal, thus mainstreaming fundamental rights in all relevant policy areas;

8. Calls for the Commission, the Council and Parliament to provide for systematic forms of consultation of bodies and institutions with expertise on human rights in general and on the Charter of Fundamental Rights in particular; refers, in this respect, to the FRA and to the relevant bodies of the Council of Europe and of the United Nations;

9. Recalls that the Court of Justice ruled\(^1\) that the Commission must fully respect the Charter also in the tasks allocated to it under the ESM Treaty, in particular when it comes to signing memoranda of understanding, and that the same applies to the country-specific recommendations in the context of the European semester; calls on the Commission to systematically integrate fundamental rights impact assessments into EU socio-economic governance, paying particular attention to compatibility with the social provisions of the Charter;

10. Points out that loopholes in the transposition and proper implementation of EU law in Member States can have a real impact on the enjoyment of EU fundamental rights; recalls, in this sense, the Commission’s role as guardian of the Treaties, and that it is thus ultimately – if not primarily – responsible for safeguarding fundamental rights, if necessary through infringement procedures; calls, in this regard, for more determined leadership in ensuring adequate implementation of EU legislation, notably concerning the right to environmental protection conferred in Article 37 of the Charter, by means of more diligent, determined and thorough infringement procedures; recalls the importance of prompt deployment and adequate implementation of the Access to Justice pillar of the Aarhus Convention;

11. Emphasises that the Charter’s application also extends to the EU agencies; states, therefore, that whenever regulations or decisions setting up agencies are drafted or revised, a reference should be included to the need for agencies to respect, within their respective mandates, the Charter and international human rights law; calls on all agencies to adopt a fundamental rights strategy, including a code of conduct for their staff and an independent mechanism to detect and report violations of fundamental rights; encourages, in particular, Frontex and the European Asylum Support Office (EASO) to fully comply with the Charter, not only through their general policies, but also in the daily activities of the border and coast guards, as well as the asylum officers,

\(^1\) Judgment of the Court (Grand Chamber) of 20 September 2016, Ledra Advertising Ltd and others v European Commission and European Central Bank (ECB), ECLI:EU:C:2016:701.
assigned to these agencies;

12. Calls for the adoption of the horizontal EU Anti-Discrimination Directive\(^1\) to be concluded without delay, in order to further guarantee fundamental rights within the Union by means of the adoption of concrete EU legislation, thereby avoiding the current interference of Article 51;

13. Recalls the importance of the principle of subsidiarity, while at the same time encouraging Member States to apply the Charter to its fullest potential in accordance with the ECHR, and encourages the exchange of best practices among Member States, the Union and its agencies; recalls and encourages the appreciation and positive interpretation and implementation of the Charter by national judges;

14. Underlines that the Charter is probably the main tool for defending, promoting and realising the Union’s values, through its implementation in specific policies and political activities; stresses that it is essential for the EU to uphold these values both in its external policy and internally, by enhancing the Charter’s coverage of its citizens and residents, and in hosting refugees and the reception of migrants;

15. Stresses that all EU institutions, agencies and bodies, including Frontex, and the Member States are fully bound by the provisions of the Charter of Fundamental Rights;

16. Recalls that both the Treaties and the Charter of Fundamental Rights make reference to the protection of national minorities and discrimination on grounds of language; calls for concrete administrative steps within the EU institutions to encourage national governments to find sustainable solutions and to promote the culture of linguistic diversity in their Member States, beyond the official EU languages;

17. Encourages the creation and promotion of national human rights institutions, which contribute to ensuring that fundamental rights are observed when making and implementing policy and laws and provide support to individuals in specific cases;

18. States that there are still gaps in access to remedy for victims in third countries of business-related fundamental rights abuses and calls for accessible, cheap and bureaucratically straightforward mechanisms that allow victims to address such abuses when the company concerned is established within the EU to be built into the EU’s external agreements, in particular its trade and investment agreements;

19. Emphasises that EU citizens have been empowered through the European Citizens’ Initiative, introduced with the Treaty of Lisbon and implemented in 2012, which gives EU citizens the right to petition the Commission to propose new EU legislation; notes that there have been four successful initiatives thus far, three of which have led to the creation of new legislation;

20. Calls on the Commission to systematically carry out human rights impact assessments before concluding external agreements, in particular trade agreements;

\(^{1}\) 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/2008/0426).
21. Stresses the importance of the establishment of the rules necessary for the protection of the Union’s budget in the case of generalised deficiencies as regards the rule of law and fundamental rights in the Member States; supports the introduction of strong and consistent fundamental rights clauses into the operational texts of the draft regulations establishing EU funds;

22. Condemns Poland’s unprecedented and isolated decision to oppose the Council conclusions on the application of the Charter on Fundamental Rights during the Justice Ministers’ meeting of 11 October 2018 in Luxembourg;

23. Recalls the political agreement between the major EU institutions and the Member States on the EU’s accession to the ECHR; considers that the completion of the process would introduce further safeguards of the fundamental rights of Union citizens and residents; asks that the necessary steps be taken to eliminate the legal barriers that prevent the conclusion of the accession process.
# INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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| Result of final vote | +: 39  
|                    | -: 8  
|                    | 0: 0  |
| Substitutes present for the final vote | Dennis de Jong, Anna Hedh, Lívia Járóka, Marek Jurek, Jean Lambert, Jeroen Lenaers, Andrejs Mamikins, Angelika Mlinar, Maite Pagazaurtundúa Ruiz, Christine Revault d’Allonnes Bonnefoy |
| Substitutes under Rule 200(2) present for the final vote | Norbert Erdős, Fernando Ruas, Adam Szejnfeld |
## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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Key to symbols:
+ : in favour
- : against
0 : abstention