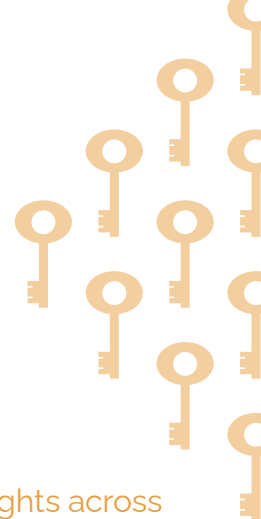


UNLOCKING THE POTENTIAL OF THE EU CHARTER OF FUNDAMENTAL RIGHTS



Ensuring Effective Litigation Strategies 2024-2029

The Charter of Fundamental Rights (Charter) is a powerful tool for the protection of rights across the European Union (EU). However, despite its robust framework, implementation is hampered by a lack of transparency and a failure to deploy all available tools. This, coupled with the European Commission's slow and cautious approach, threatens accountability and puts its role as the guardian of the treaties at stake.ⁱ

Amidst these challenges, however, notable strides were made during this past legislative term. In a landmark judgment in the [Commission v Hungary \(C78/18\)](#), the Court of Justice of the European Union (CJEU) highlighted the discriminatory nature of Hungary's 2017 NGO law and found a violation of a number of rights, including the right to freedom of association. Further rights-based cases followed, including a [pending case](#) on LGBTQI+ rights and, under the new financial framework, the European Commission launched a novel funding stream, dedicated to enhancing skills and knowledge in litigating Charter rights.

With the start of a new legislative term, defending Charter rights effectively requires a concerted strategy from monitoring to litigation and the execution of judgments:

MONITORING

While the annual [EU Rule of Law reports](#) serve as a vital reference point to track and assess the state of the rule of law, they do not provide a clear avenue for action when concerns are identified and member state persistently fails to comply with recommendations. The [Annual Report on the Application of the Charter](#) provides a more in depth report on an annual theme, which is valuable from a policy perspective but not designed to capture systemic violations or inform immediate action.

COMPLAINTS

Beyond the annual reporting cycle there needs to be a simplified process to report violations, triggering timely legal action. The existing **infringement complaints procedure** is relatively simple to submit to, but it fails to provide adequate follow up. Civil society organisations (CSOs) report waiting years to receive a final response, with no accessible database and insufficient accountability when cases are closed.

INFRINGEMENT PROCEEDINGS

Where there are breaches of EU law and fundamental rights are at stake, the European Commission should ensure a more strategic approach to infringement proceedings.ⁱⁱ This should include:

- The **prioritisation** of rights-based cases, including an **expedited procedure** and request for **interim measures**. Systemic breaches of fundamental rights should be regarded as extremely difficult to repair, justifying these steps.
- Launching **systemic infringement actions** when a series of violations show a pattern of unlawful activity. In these instances, several violations should be grouped in a single infringement action.ⁱⁱⁱ
- There should be a formal and systematic process engaging **rights holders and CSOs**. The infringement process has a built-in period of dialogue with the concerned member state – this should be mirrored by a corresponding process with affected rights holders and CSOs.

i For further elaboration on the transparency of decisions see De Schutter, Olivier, [Infringement Proceedings as a Tool for the Implementation of Fundamental Rights in the European Union \(2017\)](#). Between 2004 and 2018 the Commission's referral of cases to the Court of Justice of the European Union (CJEU) dropped by 87 percent. See Kelemen, R. D. and Pavone, Tommaso, [Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union \(2021\)](#)

ii This briefing focuses primarily on the infringement procedure rather than preliminary references

iii See further in Scheppele K. L. Kochenov D.V and Grabowska-Moroz B. [EU Values Are Law, after All: Enforcing EU Values through Systemic Infringement Actions by the European Commission and the Member States of the European Union, 2020.](#)

- **Access to information** and **transparency** should be bolstered. Despite efforts to strengthen the transparency and openness of the EU institutions, the Commission maintains the need for secrecy during the pre-litigation, dialogue phase. This appears to facilitate negotiation and expediency, above respect for the rule of law.^{iv}

LITIGATION PHASE

Once a case enters the litigation phase the CJEU can take certain measures to safeguard the protection of rights:

- **Grant interim measures** when waiting for a judgment would result in irrevocable harm.
- Allow independent third-party interveners, including CSOs and academics to request permission to submit **amicus curiae briefs**, or as provided under Article 25 of the CJEU statute, request an individual, body or organisation to give an **expert opinion**.
- Ensure **access to key documents and court hearings**. Currently, a number of Grand Chamber hearings are available online for a few hours following a hearing.^v Access should be broadened, to allow hearing to be streamed and stored without a time limit.

IMPLEMENTATION OF JUDGMENTS

Despite the CJEU's ability to issue significant fines, some member states have persistently failed to implement key rights-based judgments. Given the novelty of these cases, action should be taken to improve the Commission's capacity for enforcement:

- Establish a **monitoring unit** to oversee the execution of judgments, ensuring collaboration with CoE and civil society to develop guidance and benchmarks for implementation, including in cases of partial implementation.
- Develop a procedure similar to the **Rule 9 submission** at the Council of Europe, where civil society organisations [submit information](#) to the Committee of Ministers about the execution of judgments.
- Systematically ensure **expedited referrals back to the CJEU** for the court to impose financial penalties. The existing process under Article 260 requires a period of dialogue with the member state, which should be expedited and systematically launched following violations of CJEU rulings.^{vi}

FUNDING FOR LITIGATION

A persistent challenge is the lack of funding for strategic litigation hindering the ability of legal practitioners to secure the application of Charter rights. While recent funding under the Citizens, Equality, Rights and Values (CERV) programme supports important activities such as training and mentoring for lawyers, a critical gap remains in funding litigation itself. A [feasibility study](#) commissioned by the European Commission in 2020 recommended a number of funding models - these should be revisited to include:

- Elaborate a model for a litigation fund for the implementation of Charter rights.
- Convene a group of donors to exchange on collaborative models and future support.
- Link the fund with groups of lawyers and CSOs experienced in CJEU litigation.

Unlocking the full potential of the Charter demands a concerted effort during the next Commission term, requiring robust, tailored mechanisms and an unwavering commitment to upholding fundamental rights across the European Union. Without a more streamlined system for the enforcement of rights, the recent cases will remain exceptions and the power of the Charter unmet.

SIGNED: Amnesty International, Bulgarian Helsinki Committee, Civil Liberties Union for Europe, Civil Rights Defenders, Democracy Reporting International, Estonian Human Rights Centre, European Partnership for Democracy, Human Rights Monitoring Institute Lithuania (HRMI), Hungarian Helsinki Committee, ILGA-Europe, , International Commission of Jurists, International Federation for Human Rights (FIDH), Italian Coalition for Civil Liberties and Rights (CILDR), Nederlands Juristen Comité voor de Mensenrechten (NJCM), Dutch section of the International Commission of Jurists, Reclaim, Rule of Law Clinic - CEU Democracy Institute (Budapest) STARLIGHT Project (the Hertie School and the Hungarian Helsinki Committee), The Good Lobby Profs, TGEU (Trans Europe and Central Asia).

^{iv} Ibid 1

^v See the current access for a pilot period https://curia.europa.eu/jcms/jcms/p1_1477137/en/

^{vi} See for further analysis <https://verfassungsblog.de/rule-of-law-chickens-to-roost/>