

Vienna, 27 April 2020

**Consultation of judges, other justice practitioners and training institutions on the new European Commission Strategy on the effective application of the Charter of Fundamental Rights in the EU by the European Commission**

*“Is there anything else you would like to share with us regarding the Charter of Fundamental Rights, its application in practice, and how you work with it or would like to work with it?”*

Generally, lawyers in Austria do apply the Charter of Fundamental Rights in their work. However, it has to be distinguished between different situations of legal practice.

For example, lawyers who practice foremost in areas of civil law usually do not refer to the Charter. Their cases are usually based in highly-regulated specific areas of law and interventions based on the Charter are only very seldom necessary.

The rights of the Charter are more often evoked in public or criminal law cases. However, when looking at the judgements in these areas of law, fundamental rights arguments based on the constitution or the ECHR seem to prevail over those based on the Charter – probably because of a stronger legal tradition, including jurisprudence/ settled case-law.

In criminal law cases, judges seem to rely strongly on commonly acknowledged legal publications (“Kommentare”). It seems difficult to convince with “out of the box”-arguments which refer, for example, to Charter rights.

Another example where an effective application of the Charter proves difficult is the area of data protection laws. Since the introduction of the GDPR, both the executive and judicative branches seem to base their decisions solely on this regulation, without taking into account other sources of law, e.g. the Charter.

Finally, the ÖRAK would support efforts by the European Commission to offer further training on the Charter for all legal professions.

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