



## ACTIVE CHARTER TRAINING THROUGH INTERACTION OF NATIONAL EXPERIENCES – ACTIONES

### LOCAL TRAINING EVENT

ORGANISED BY THE UNIVERSITY OF LJUBLJANA, FACULTY OF LAW IN THE FRAMEWORK OF THE PROJECT "ACTIVE CHARTER TRAINING THROUGH INTERACTION OF NATIONAL EXPERIENCES" (ACTIONES)



FUNDED BY THE EUROPEAN COMMISSION FUNDAMENTAL RIGHTS & CITIZENSHIP PROGRAMME

UNIVERSITY OF LJUBLJANA, FACULTY OF LAW  
8 MAY – 9 MAY 2017

POLJANSKI NASIP 2, 1000 LJUBLJANA, SLOVENIA

## INTRODUCTION

---

The local training event takes place in the framework of the Project entitled - *Active Charter Training through Interaction Of National ExperienceS (ACTIONES)*, which is directed by the European University Institute (EUI) Centre for Judicial Cooperation with the support of the European Commission, DG Justice. The *ACTIONES* Project includes 7 leading academic institutions (Faculty of Law, University of Ljubljana being one of them) a European-wide association of judges, and 9 national institutions entrusted with the task of training judges and lawyers. It is a manifestation of the conviction that a high and coherent standard of fundamental rights protection within the European Union (EU) requires way more than simple knowledge on the Charter of Fundamental Rights of the European Union (the Charter). This must be complemented by deep social and political sensitivity, awareness and swiftness in adopting procedural solutions offered by various legal orders, openness to their products, and readiness to engage in exchanges of views. These qualities must be nurtured with the awareness of mundane time and resource limitations that judges and lawyers face in their everyday work.

The Project aims at providing answers to all the above mentioned needs by way of the elaboration of an easy-to-use toolkit through which legal practitioners will become familiar with the techniques of vertical and horizontal judicial interaction, ensuring thus the effective implementation of the Charter and adequate remedies to its violations.



Similar to other events organised in the course of the ACTIONES Project, this local event has been structured as a forum for exchange of experiences, best practices and solutions to the current problems that European and national judges are facing with the application of the EU Charter in the field of asylum, migration and law of human rights. The mandate of national judges in these fields is particularly difficult for three main reasons. *Firstly*, due to the complexity surrounding the scope of application of the EU Charter both substantially (for instance the controversies surrounding the content of Article 18 – *the right to asylum*; difficulty of establishing the relevant EU secondary act applicable to the case, e.g. *Celaj*), and personally (e.g. does Article 41 – *right to good administration* apply to the Member States’ authorities and courts when implementing the Common European Asylum System (CEAS) and Return Directive?). *Secondly*, the CEAS and Return Directive touch upon politically sensitive issues of public security of the EU countries, placing national judges in the difficult position of controlling the executive in a field that has traditionally been considered as falling within the prerogative of the executive, and where the judiciary enjoyed until recently limited power of control. However, the EU Charter is changing this domestic legal tradition, empowering national judges to scrutinise the discretionary power of the executive and at times offering the tool to fill the legislative gaps in the domestic protection of fundamental rights (e.g. Case C-146/14 PPU *Mahdi*). *Thirdly*, the European mandate of national courts is becoming more and more demanding due to the occasional divergent jurisprudence of the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR). Until recently, the jurisprudence of the two European courts on Dublin transfers was divergent (see the *Tarakhel v Switzerland v N.S and others, Puid and Abdullahi cases*). The Slovenian Supreme Court has helped in clarifying the debate on the threshold of violations of Article 4 of the EU Charter and legitimate refusal(s) to transfer by sending a preliminary reference to the CJEU which has finally embraced the ECtHR dual test of systemic deficiencies and individual violations of Article 4 EU Charter as thresholds for limiting Dublin transfers (C-578/16 PPU *C.K. and others*).

The local training aims to tackle these complex and multiple difficulties that national judges are facing in the application of the EU Charter, within the framework of the Centre for Judicial Cooperation format of events as forums where national judges directly interact between themselves and with academics for the purpose of encouraging judicial dialogue. The underlying premise of the ACTIONES Project is that techniques of judicial interaction (e.g., *preliminary reference, consistent interpretation, direct effect, proportionality test, and mutual recognition*) represent the entrance door of the Charter in the practice of courts.

This local training is adjusted to the constitutional structure of the member state, and takes into account peculiarities of national judicial system, judicial tradition as well as the current migration situation in Slovenia including migration and asylum policies and legislation. Due to special geographic position of Slovenia, being the member of both the EU and Schengen area, numerous delicate legal questions emerged in recent years transcending the borders of the country. Some preliminary questions addressed by Slovenian courts indicate how important judicial interaction is, and allude to the added value of the EU Charter in the area of asylum, migration and law of human rights. In this respect, the role of national judges in the coherent and systematic protection of human rights in the European Union has become ever so important.

#### OTHER IMPORTANT INFORMATION

The local training will take place at the Faculty of Law of the University of Ljubljana, Poljanski nasip 2 1000 Ljubljana. Lectures will be held by leading national and foreign experts from the field of human rights law. Lectures that will take place in English language will be interpreted into Slovene language.

Number of participants is limited to 25. The organisers will cover costs of coffee breaks and lunch. Participants coming from places that are distant from Ljubljana for more than 100 kilometres will also get the reimbursement of travel costs.



## PROGRAMME

Monday, 8<sup>th</sup> May 2017: Day 1

9.00 Registration

9.15 Welcome address                      Grega Strban | Vice Dean, Faculty of Law, University of Ljubljana  
Fabrizio Cafaggi | Scientific Coordinator of the ACTIONES Project

### MODUL 1

#### APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

(Golden room)

9.45 *Effective Judicial Protection within the Context of the EU Charter: an Overview*

Nicole Lazzerini | ACTIONES Parma Team Member

10.15 *The Principles of Effectiveness, Proportionality and Dissuasiveness in the Enforcement of EU Law*

Fabrizio Cafaggi

10.45 *ACTIONES Module on asylum and migration – the opportunities of judicial dialogue in the application of the EU Charter in the fields of asylum and immigration*

Madalina Moraru | Centre for Judicial Cooperation, EUI, ACTIONES Team member

11.15 Coffee break

11.45 *(Supra)national Triangle: Interplay of national constitutional orders, ECHR and EU Charter*

Saša Zagorc | ACTIONES Ljubljana Team Member

12.15 *The application of the EU Charter in the field of asylum and immigration: Bottom-up Approach*

Boštjan Zalar | judge, Administrative Court, Republic of Slovenia

12.45 *Discussion*

13.00 Lunch



## MODUL 2 HYPOTHETICALS

### 14.00 *Hypotheticals – general introduction*

Saša Zagorc

Neža Kogovšek Šalamon | Mirovni inštitut, Odysseus Network

### 14.15 *Hypotheticals 1 and 2*

Group 1

Tutor: Madalina Moraru

Group 2

Tutor: Neža Kogovšek Šalamon

15.00 Presentation of the Conclusions reached within Working Groups in the Plenary session

15.30 Discussion

16.00 End of the first day



Tuesday, 9<sup>th</sup> May 2017: Day 2

**MODUL 3**

**SELECTED ASPECTS OF RELEVANT CASE LAW AND ESTABLISHED STANDARDS IN THE AREA OF  
ASYLUM AND MIGRATION LAW (Golden room)**

***9.00 Reference for a preliminary ruling in the area of migration and asylum law***

Erik Kerševan | judge, Supreme Court of the Republic of Slovenia

***9.30 ELI checklist on legality of detention of asylum seekers and irregular migrants (Interplay of Arts. 6 and 47 EU Charter and Arts 5 and 13 ECHR)***

Boštjan Zalar | senior judge, Administrative Court of the Republic of Slovenia

***10.00 Hypothetical 3***

Tutor: Maruša Veber | Researcher, ACTIONES Ljubljana Team Member

11.00 Coffee break

**11.30 Roundtable**

***Pathways of AFSJ in light of the European Commission's White Paper on the future of Europe***

Moderator: Matej Accetto | Constitutional Court of the Republic of Slovenia; Faculty of Law, University of Ljubljana

Speakers:

Fabrizio Cafaggi

Madalina Moraru

Samo Bardutzky | Faculty of Law, University of Ljubljana

**13.00 End of the training**