



THE EU CHARTER OF FUNDAMENTAL RIGHTS

in France

CHARTER COUNTRY-SHEET

“ [N]ational authorities (judicial authorities, law enforcement bodies and administrations) are **key actors** in giving concrete effect to the rights and freedoms enshrined in the Charter”

European Parliament (2015), Resolution on the situation of fundamental rights in the European Union (2013-2014) 2014/2254(INI)), Strasbourg, 8 September 2015, recital P.

The Charter of Fundamental Rights of the European Union is the EU's bill of human rights. It contains 50 articles with substantive rights and principles, followed by four articles with general provisions. Member States have a duty to respect the rights and observe the principles of the Charter whenever they are acting within the scope of binding EU law. Where the Charter provisions are sufficiently precise and unconditional, they can have a direct effect at the national level – for instance in national courtrooms. Charter provisions that are 'principles' can only be invoked before a court if implemented by legislative or executive acts.

Member States have an explicit duty to promote the Charter's application. This country-sheet supports that effort by giving examples of the Charter's use and highlighting how it adds value.

The EU Charter as an obligation: when are French authorities required to apply it?

- ★ Given that EU law is predominantly implemented at national level, national judges, parliamentarians, government officials and legal practitioners are core 'Charter agents' on whom the EU system relies.
- ★ The EU Charter of Fundamental Rights primarily addresses the EU itself. It binds EU Member States "only when they are implementing Union law" (Article 51 of the Charter). However, a significant part of national law- and policymaking is directly or indirectly influenced by EU law. Wherever a legislative file, a judicial case or factual situation falls within the scope of binding EU law, the EU Charter applies and can be used by and invoked before national authorities.
- ★ It is not always easy to draw the borders of the Charter's field of application. The question of whether the Charter applies is central to the proper implementation of EU law. FRA's handbook on *Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level* provides some guidance on this issue.



How is the Charter used in France?

The French constitution

The French Constitution

- ★ The constitution dates from 1958. While it does not enshrine a list of rights, it contains some relevant provisions, such as: equality (Article 1 – revised 1999), freedom of expression (Article 4 – revised 2008) and arbitrary detention and the death penalty (Articles 66 and 66-1).
- ★ These fundamental rights are part of the “Constitutional block” (*Bloc de constitutionnalité*), which gathers all constitutional rules. It consists of the **1958 French Constitution**, last revised in 2009, and the legal texts to which its preamble refers: the **Declaration of human and civic rights of 26 August 1789**, the **Preamble to the 1946 Constitution**, and the **Charter of the Environment** adopted on 24 June 2004.
- ★ The Declaration of human and civic rights of 26 August 1789 comprises 17 articles proclaiming the principle of equality, the inherent rights of the individual and the principles of organisation of the State. The Preamble to the 1946 Constitution, containing 18 articles, proclaims the political, economic and social principles. The Charter of the Environment of 24 June 2004 consists of 10 articles, which guarantee the rights and duties linked to the protection of the environment, such as the right to live in an environment that is balanced and respectful of health (Article 1).

Constitutional law, the EU Charter and the ECHR

- ★ Neither the Charter nor the ECHR are referred to in the constitutional norms.

All EU Member States apply the EU Charter – but not always to its full potential. The Charter is sometimes referred to in the context of upcoming legislation or debates in parliaments. National authorities and courts also sometimes refer to the Charter in their decisions and rulings. Examples from France include:

- ★ **National courts: equality before the law (Article 20) and non-discrimination (Article 21)**
In 2015, a decision by France’s *Conseil d’Etat* (**No. FR:CESSR:2015:383664.20150511**) concerned a dual citizen (Moroccan and French) who was stripped of French nationality after a final judgment of the High Court of Paris convicted him for participating in a criminal association to prepare an act of terrorism. The court referred to Articles 20 and 21 of the Charter and checked the case against the more detailed parameters developed in relevant CJEU case law (*Rottman v. Freistaat Bayern* (C-135/08)) to conclude that the withdrawal was not inconsistent with EU law.
- ★ **National legislation: general reference to the EU Charter**
In 2016, France amended its Code of Criminal Procedure (**Ordinance No. 2016-1636 of 1 December 2016 relating to the European Investigation Order in criminal matters**) to include Article 694-31, which deals with the recognition of European Investigation Orders. The article provides for a general possibility to refuse to execute such an order, if there are serious reasons to believe that its execution would be incompatible with France’s respect of the rights and freedoms guaranteed by the **European Convention on Human Rights** (ECHR) and the Charter.
- ★ **National parliament: respect for private and family life (Article 7) and protection of personal data (Article 8)**
In 2017, data protection was a central topic in a parliamentary debate (**National Assembly, Proceedings**) when a legislative proposal raised concerns relating to Articles 7 and 8 of the EU Charter. A Member of Parliament expressed the view that systematically collecting personal data of flight passengers who are not criminal suspects and being able to share those data with other countries would violate the right to respect for private life and data protection, as enshrined in the EU Charter.

The Charter's added value

The Charter is a legally binding document. It includes civil and political rights as well as economic, social and cultural rights. Moreover, it benefits from the strength of EU law, which often has direct effect and, in principle and unlike international law, must be granted supremacy over national law. However, in many contexts it may not be possible to directly invoke the Charter – for instance, because the respective Charter provision is a principle and not a right and was not implemented by a legislative or executive act; or is otherwise not directly applicable; or does not apply at all because the case at hand falls outside the scope of EU law. In any case, the Charter increases the visibility of rights. It explicitly spells out rights and principles that are often not expressly laid out in other international human rights documents, such as the ECHR (as shown in Figure 1). Unlike the Council of Europe's European Social Charter, the EU Charter does not offer the possibility to be bound only by selected provisions; Member States are bound by all of its provisions.

Given the breadth of rights explicitly covered by the Charter, it can help to increase the visibility of rights at national level. Moreover, national courts do sometimes use the Charter to interpret or further develop national law, even outside the scope of EU law.

When comparing the Charter with the constitutions of EU Member States,

- No ECHR equivalent
- More extensive than ECHR
- Equivalent protection to ECHR
- EU context-specific

Note: The figure is based on the Explanations on the Charter and a textual comparison of the two documents in order to show how the Charter increases the visibility of entitlements (some of the rights not explicitly contained in the ECHR are covered by the case law, which however is less visible to a non-expert).

Source: FRA, 2018

Figure 1: What rights are covered? Comparing the Charter and the ECHR

Charter articles and text of the ECHR: differences and equivalence in coverage

Art.1-5 Dignity

- 1 Human dignity
- 2 Life
- 3 Integrity of the person
- 4 Torture; inhuman, degrading treatment
- 5 Slavery and forced labour

Art.6-19 Freedoms

- 6 Liberty and security
- 7 Private and family life
- 8 Personal data
- 9 Marry and found family
- 10 Thought conscience and religion
- 11 Expression and information
- 12 Assembly and association
- 13 Arts and sciences
- 14 Education
- 15 Choose occupation and engage in work
- 16 Conduct a business
- 17 Property
- 18 Asylum
- 19 Removal, expulsion or extradition

Art.20-26 Equality

- 20 Equality before the law
- 21 Non-discrimination
- 22 Cultural, religious and linguistic diversity
- 23 Equality: men and women
- 24 The child
- 25 Elderly
- 26 Integration of persons with disabilities

Art.27-38 Solidarity

- 27 Workers right to information and consultation
- 28 Collective bargaining and action
- 29 Access to placement services
- 30 Unjustified dismissal
- 31 Fair and just working conditions
- 32 Prohibition of child labour; protection at work
- 33 Family and professional life
- 34 Social security and assistance
- 35 Health care
- 36 Access to services of economic interest
- 37 Environmental protection
- 38 Consumer protection

Art.39-46 Citizen's rights

- 39 Vote and stand as candidate to EP
- 40 Vote and candidate at municipal elections
- 41 Good administration
- 42 Access to documents
- 43 European ombudsman
- 44 Petition (EP)
- 45 Movement and residence
- 46 Diplomatic and consular protection

Art.47-50 Justice

- 47 Effective remedy and fair trial
- 48 Presumption of innocence; right of defence
- 49 Legality and proportionality of offences and penalties
- 50 *Ne bis in idem*

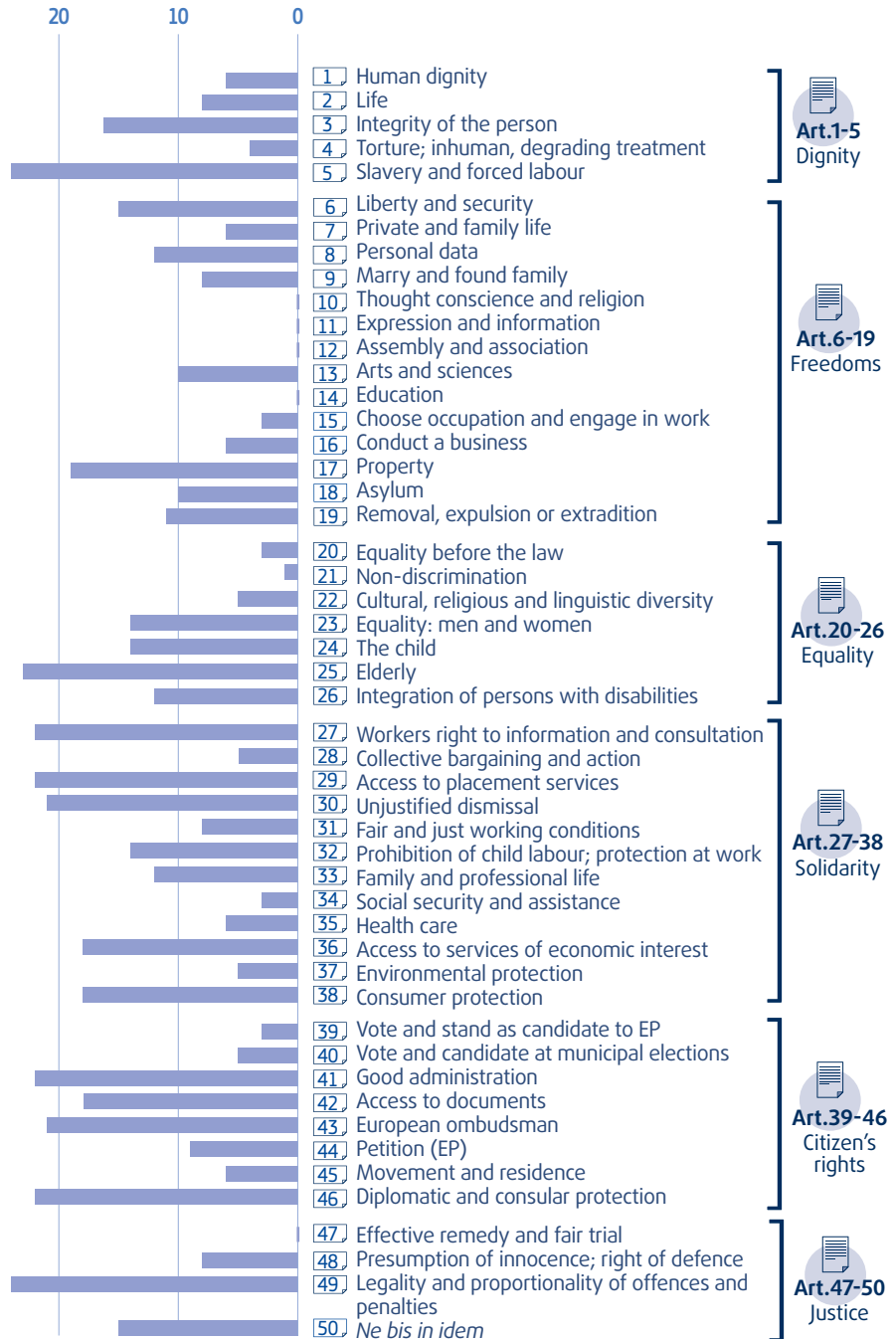
it becomes evident that the text of the Charter is often more explicit about certain rights. For example, in France, many Charter rights appear not to be fully mirrored in national constitutional law – for instance, right to the integrity of the person (Article 4), prohibition of slavery and forced labour (Article 5), respect for private and family life (Article 7), protection of personal data (Article 8), right to marry and right to found a family (Article 9), freedom of the arts and sciences (Article 13), right of access to placement services (Article 29), protection in the event of unjustified dismissal (Article 30), prohibition of child labour and protection of young people at work (Article 32), access to services of

general economic interest (Article 36), consumer protection (Article 38), right to good administration (Article 41), right to access of documents (Article 42), and the right not to be tried or punished twice for the same criminal offence (Article 50).

The absence of certain rights from a constitutional text by no means implies that they are not protected by the legal order. However, explicit guarantees in a constitutional text make these rights more visible and so also more accessible. In this sense, the Charter can strengthen less well-known rights.

Figure 2: Does the Charter add to the visibility of rights? Comparing the Charter and national constitutions

Number of EU Member States that do not have equivalent/explicit provisions for this Article in their constitutional texts



Note: The figure is based on a textual comparison of the Charter and written constitutional law of the EU Member States (excluding the United Kingdom) in order to show under which provisions the Charter is most likely to increase the visibility of entitlements. EU-specific entitlements (the Charter provisions that are in Figure 1 marked in pale yellow) were considered as reflected in national constitutions if a comparable provision could be identified (for instance a constitutional provision concerning a national Ombudsperson).

Source: FRA, 2018

The EU Charter of Fundamental Rights: *a young instrument*

- ★ A European Convention drafted the Charter. The Convention was composed of 15 representatives of the then 15 EU Member States, 46 parliamentarians (16 members of the European Parliament and 30 members of national parliaments), and one European Commission representative. The Convention also consulted civil society.
- ★ The European Parliament, the European Commission and the Council of the EU solemnly proclaimed the Charter in December 2000.
- ★ With the entry into force of the Lisbon Treaty on 1 December 2009, the Charter became legally binding. It is a relatively new legal instrument that is increasingly used at national level.

Further information

- ★ **The EU Charter**, available on EUR-Lex.
- ★ The **Explanations relating to the Charter of fundamental rights**, by the Presidium of the European Convention.
- ★ **Charterpedia** – a FRA webspace bringing together Charter-related information, including national case law.
- ★ **EU Charter app** – a FRA app to access EU Charter rights anytime, anywhere, as well as national and CJEU case law using the Charter.
- ★ FRA (2018), **Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level**, Luxembourg, Publications Office.
- ★ FRA (2018), Opinion 4/2018, **Challenges and opportunities for the implementation of the Charter of Fundamental Rights**.
- ★ **Thematic FRA-CoE/ECtHR handbooks on European law**: Non-discrimination (2018), Asylum (2014), Data protection (2018), Children's rights (2015), and Access to justice (2016).
- ★ FRA's annual *Fundamental Rights Report* contains a **specific chapter** dedicated to the use of the Charter at national level.
- ★ European Commission, **Annual reports on the application of the EU Charter of Fundamental Rights**.

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