



# THE EU CHARTER OF FUNDAMENTAL RIGHTS

## in Luxembourg

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 Luxembourg 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 Luxembourg?

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 Luxembourg include:

### ★ National courts: family and professional life (Article 33)

In 2015, the Administrative Court submitted a request to the CJEU asking whether, in provisions of the free movement *acquis*, the term “child” should be read as “the frontier worker’s ‘direct descendant in the first degree whose relationship with his parent is legally established’” or rather as a young person for whom the “frontier worker ‘continues to provide for the student’s maintenance’ without necessarily being connected to the student through a legal child–parent relationship, in particular where a sufficient link of communal life can be identified”. The national court asked these questions in the context of Article 33 of the EU Charter on “family and professional life”.

### ★ National legislation: scope and interpretation of rights and principles (Article 52)

Article 52, which describes the scope and the interpretation of the rights and principles laid down in the Charter, played an important role in an opinion issued by the Human Rights League in 2015. The opinion claims that a bill on the reorganisation of the state’s intelligence services did not sufficiently address the proportionality of the means used by the intelligence agencies. It furthermore found that Article 10 of the bill did not ensure that data are used in accordance with Articles 3 (mission of the intelligence services) and 4 (national and international cooperation) of the bill and concluded that it thus violates Articles 7, 8 and 47 of the EU Charter.

### ★ National courts: right to good administration (Article 41)

In 2017, in a case (38129C) concerning the application for financial aid for higher studies, the High Administrative Court referred to Article 41 of the Charter. The applicant, a French resident studying in Luxembourg, saw his application rejected by the Minister of Higher Education and Research. The rejection was based on the principle of non-accumulation of financial aid, and the fact that the student had not delivered the requested document from a French funding body for higher studies, which indicated how much financial aid the student could receive from that body. The applicant argued that the request was irrelevant, since he could not qualify for said French financial aid, and had therefore never submitted an application to obtain it. The court held that the competent administrative authority should have understood that the appellant was in a situation of material impossibility to provide the documents. Therefore, the court decided in favour of the appellant and annulled the decision made by the Minister of Higher Education and Research, ordering him to re-evaluate the appellant’s application.

## The Luxembourg constitution

### The Constitution of Luxembourg

- ★ It was adopted in 1868. It contains 12 chapters and 120 articles.
- ★ A catalogue of fundamental rights is enshrined in the second chapter of the constitution, entitled *On public freedoms and fundamental rights*, in its Articles 9 to 31.
- ★ Since its 2007 revision, the constitution contains a broad range of fundamental civil and political as well as socio-economic rights.

### The constitution, the EU Charter and the ECHR

- ★ The constitution makes no explicit reference to the Charter, nor does it explicitly stipulate that national law has to be in line with EU primary law. The **European Convention on Human Rights** is not explicitly mentioned.
- ★ However, binding international and EU law is considered to have a higher standing and overrule national law in case of conflicting norms.
- ★ The **general revision proposal of 21 April 2009** included an effort to reorganise the entire Chapter 2 of the constitution, related to public freedoms and fundamental rights, by proposing a new structure based on the EU Charter of Fundamental Rights. The related parliamentary work is not concluded.

# 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.

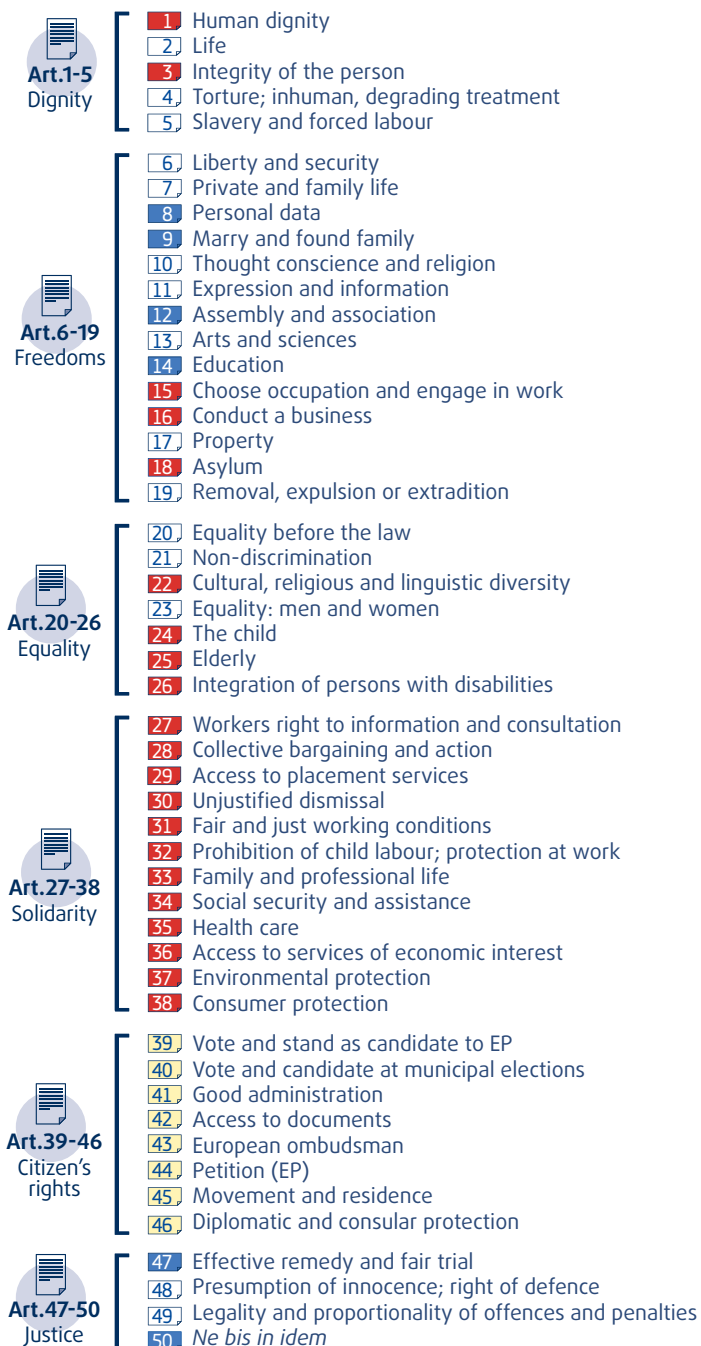
- No ECHR equivalent
- More extensive than ECHR
- Equivalent protection to ECHR
- EU context-specific

*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



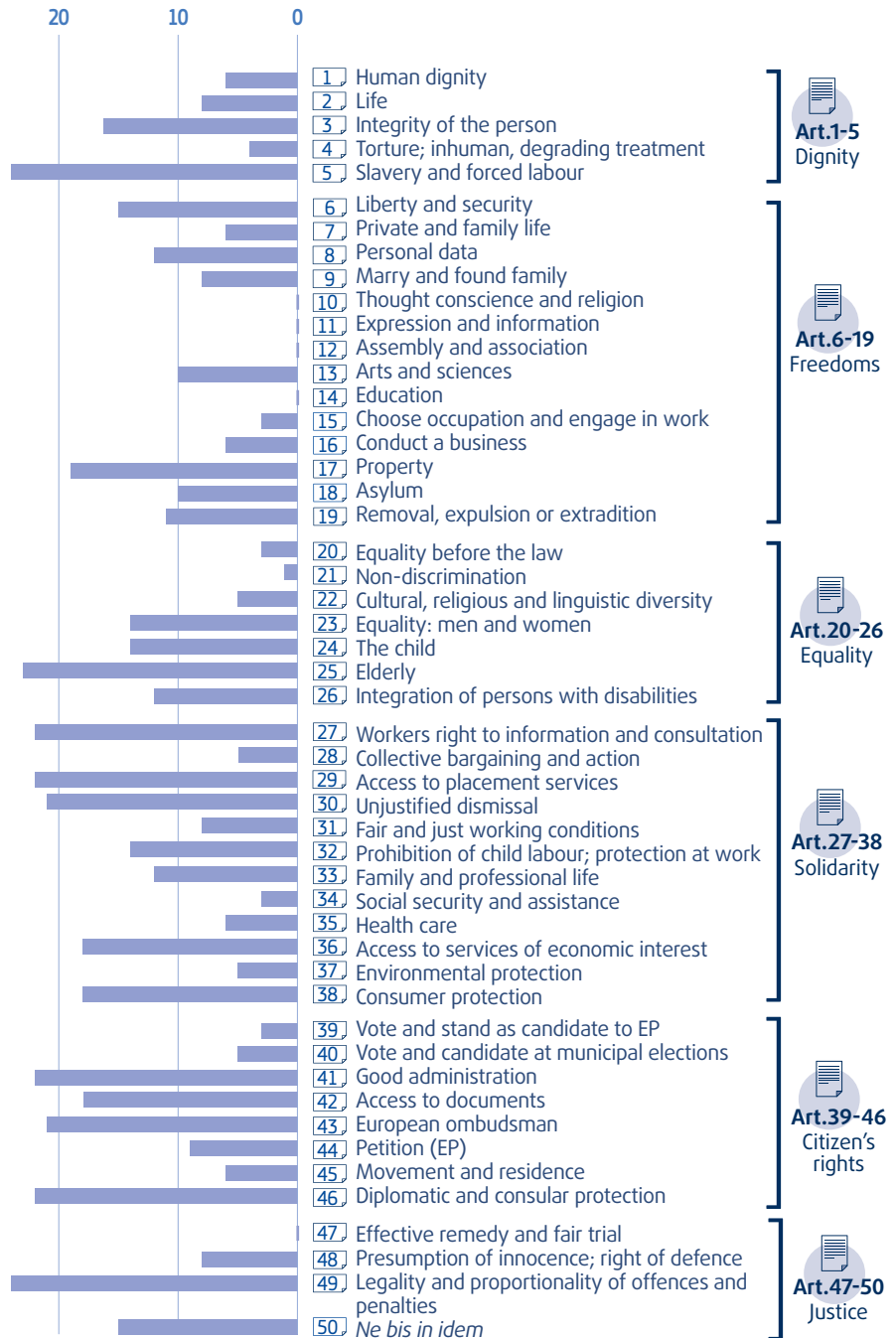
When comparing the Charter with the constitutions of EU Member States, it becomes evident that the text of the Charter is often more explicit about certain rights. For example, in Luxembourg, many Charter rights appear not to be fully mirrored in national constitutional law – for instance, human dignity (Article 1), right to the integrity of the person (Article 3), prohibition of torture and inhuman or degrading treatment or punishment (Article 4), prohibition of slavery and forced labour (Article 5), freedom of the arts and sciences (Article 13), protection in the event of removal, expulsion or extradition (Article 19), non-discrimination (Article 21), cultural, religious and linguistic diversity (Article 22), rights of the child (Article 24), rights of

the elderly (Article 25), workers’ right to information and consultation within the undertaking (Article 27), 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 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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