



# THE EU CHARTER OF FUNDAMENTAL RIGHTS

## in Poland

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 Polish 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. This is without prejudice to **Protocol 30** on the application of the Charter to Poland and the United Kingdom (as interpreted by the Court of Justice of the European Union (CJEU), see C-411/10, **EU:C:2011:865**).
- ★ 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 Poland?

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 Poland include:

★ **National legislation: respect for private and family life (Article 7) and the protection of personal data (Article 8)**

In 2015, the modification of the Act on Police prompted the Inspector General for Personal Data Protection to intervene. Her opinion referred to respect for private and family life and the protection of personal data.

★ **National courts: privacy rights before a court of appeal in Warsaw**

In April 2017, the court decided on a case concerning search results on Google relating to a businessman. An article with the inflammatory title ‘Very poor criminal’ was behind a pay wall, so the content – which verified the actual role of the businessman, namely in breaking up a criminal group – was available only to subscribers. Building on the case law of the CJEU – and thereby indirectly also the Charter – the judgment included a ‘right to be delisted’ from the search results of a search engine, if a particular search result violates, for example, a person’s privacy. The court ordered Google to pay PLN 10,000 (EUR 2,500) compensation to the individual. The case is pending before the Supreme Court.

★ **Parliamentary debate: right to an effective remedy and to a fair trial (Article 47)**

In light of judicial reforms in Poland, the importance of Article 47 of the Charter was highlighted in a parliamentary debate on the separation of powers and the independence of the justice system. In a parliamentary **session** on 18 July 2017, the Polish Ombudsperson stressed that “Poland is an EU Member State and each of the Polish courts is also a court of the European Union which has to interpret and apply EU law. That’s why the standards set by Article 47 of the Charter are essential. It matters that the courts are independent from the executive.”

## The Polish constitution

### The Constitution of Poland

- ★ The document was adopted in 1997 by the Parliament and then accepted in a constitutional referendum.
- ★ It is composed of 13 chapters. A catalogue of fundamental rights is enshrined in Articles 30 to 81 of the second chapter of the constitution.
- ★ Chapter Two includes general principles, personal freedoms and rights, political freedoms and rights, as well as the protection of economic, social and cultural rights.

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

- ★ Although the constitutional text does not explicitly mention the Charter, or the **European Convention on Human Rights (ECHR)**, Article 9 of the constitution establishes that the Republic of Poland shall respect international law binding upon it.

# 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.

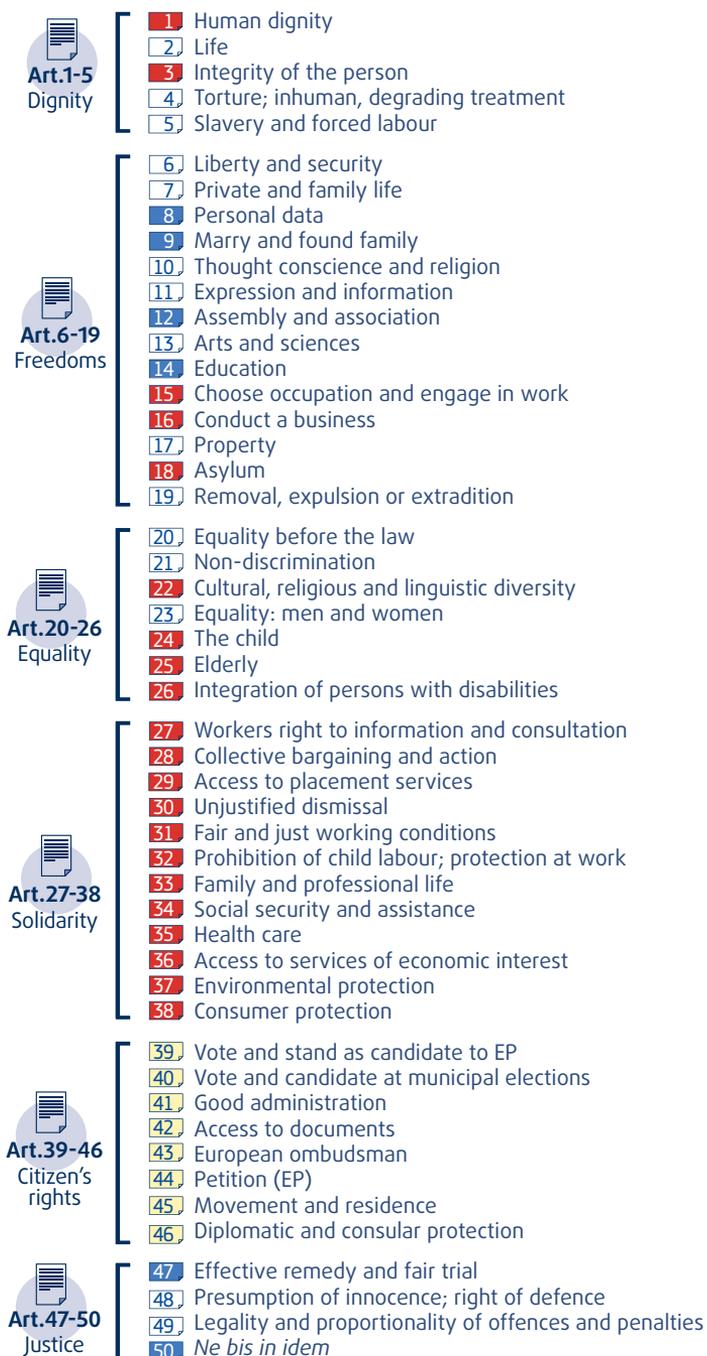
- No ECHR equivalent
- More extensive than ECHR
- Equivalent protection to ECHR
- EU context-specific

*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



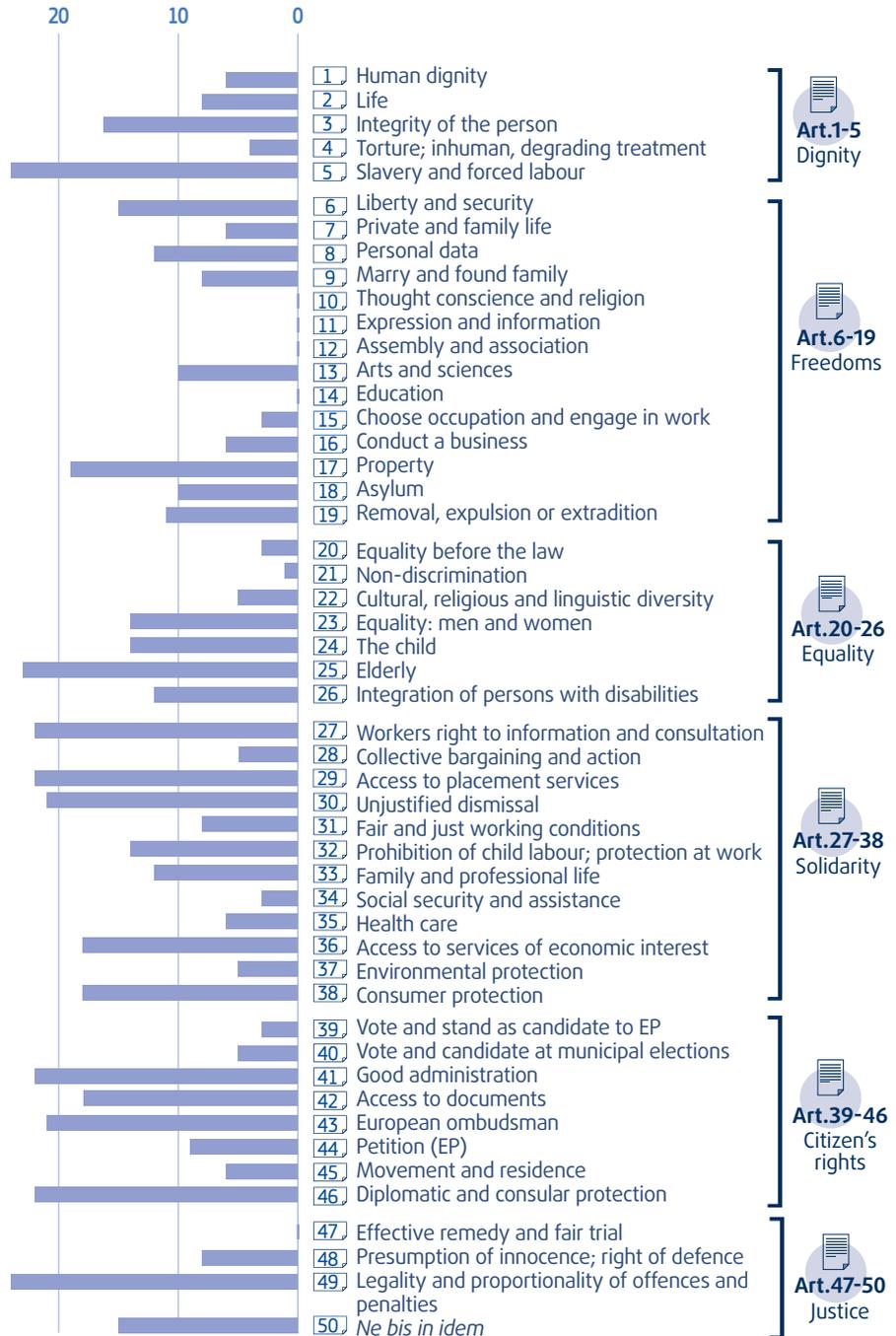
Given the breadth of rights explicitly covered by the Charter, it can help to increase the visibility of rights at national level. Moreover, national courts do sometimes use the Charter to interpret or further develop national law, even outside the scope of EU law.

When comparing the Charter with the constitutions of EU Member States, it becomes evident that the text of the Charter is often more explicit about certain rights. For example, in Poland, some Charter rights appear not to be fully mirrored in national constitutional law

– for instance, the rights of the elderly (Article 25), protection in the event of unjustified dismissal (Article 30), the right to good administration (Article 41), 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**.

