



*Making fundamental rights
a reality means
following the right to life*

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1

EU Charter of Fundamental Rights and its use by Member States



The Charter of Fundamental Rights of the European Union complements national human rights documents and the European Convention on Human Rights (ECHR). Its potential is not yet fully exploited, with references thereto in national courts, parliaments and governments limited in number and often superficial. However, there are examples of the Charter adding value and profiting from its standing as part of Union law, especially in court decisions. Meanwhile, EU Member States continue to lack policies aimed at promoting the Charter – though awareness of the need to train legal professionals on Charter-related issues appears to be growing.

The European Commission's annual report on the application of the EU Charter of Fundamental Rights provides information on how the Charter is used.¹ Information on the EU institutions' use of the Charter is just a mouse-click away from citizens: everybody can easily track this through the EU's legal database, eur-lex. A eur-lex search for the 'Charter of Fundamental Rights' reveals that, in 2016, it was referred to in well over 600 EU documents, all of which can be accessed in full text. Over 100 of these documents pertained to the judiciary; almost 30 were legislative documents; and close to 400 were preparatory acts.

It is far more difficult to track and analyse the use of the Charter in parliamentary debates, impact assessments, bills, legislation and case law in the 28 different national systems (although EUR-Lex does link, via N-Lex, to national law databases in individual EU Member States). Meanwhile, academic literature on the Charter remains rich. Articles published in 2016 deal with the Charter in general terms,² its overall scope and effect at national level,³ its criminal law aspects,⁴ its social⁵ and economic aspects,⁶ issues of access to justice,⁷ and other select issues.⁸ However, expert writing deals only fragmentarily with the Charter's use in the various national legal systems.⁹

More needs to be known about the Charter's 'life' at national level – the level at which the document, like EU law in general, is mainly implemented and applied. National parliaments incorporate EU legislation into

national law. National governments, regional and local authorities, as well as national judiciaries apply EU law provisions and the Charter when delivering on their tasks and dealings with citizens. Whenever they act within the scope of an EU law provision, national authorities and judges are bound by the Charter. Against this backdrop, it is recognised that national authorities are key actors in – to borrow the words of the European Parliament – giving "concrete effect to the rights and freedoms enshrined in the Charter".¹⁰ In 2016, the parliament reiterated its call not to forget "the importance of raising awareness about the Charter".¹¹ Moreover, on 19 February 2016, the Dutch Presidency of the EU convened a conference to exchange ideas about the challenges of applying the Charter at national level. Finally, in June 2016, the Council of the EU agreed on Conclusions on the application of the Charter, placing the national application of the Charter at the centre of attention.

FRA therefore regularly looks into the use of the Charter in different national contexts. This is the fourth Fundamental Rights Report that contains a chapter focused on the Charter. As for previous reports, the agency's research network, Franet, provided the information on which the analysis is based. Franet is the agency's multidisciplinary research network, which has been in operation since 2011. It is composed of contractors in each EU Member State who, upon request, provide relevant data to FRA on fundamental rights issues to facilitate the agency's comparative analyses.

“[T]o ensure follow-up, the Council calls [...] to continue exchanging information about tools, best practices and awareness raising methods on the application of the Charter at both EU and national level on a yearly basis. [...] Recognising that the Charter only applies to Member States when they are acting within the scope of EU law, the Council underlines the need to establish the applicability of the Charter in individual circumstances and underlines the need for particular attention by national authorities to those Charter provisions the meaning and scope of which are not determined by corresponding provisions of the ECHR with a view to the effective application of the Charter. [...] The Council also recognises the relevance of the development of trainings and tools, such as a checklist for national guidance on the application of the Charter or targeted training for determining the applicability of the Charter in national legislative and policy procedures within a broader framework of human rights protection.”

Council of the European Union (2016), Council conclusions on the application of the Charter of Fundamental Rights in 2015, adopted at its 3473rd meeting on 9 June 2016, paras. 2, 3, 6 and 7

FRA asked Franet to provide up to three specific and relevant examples under each of the categories addressed here: case law, impact assessments, parliamentary debates, etc. The possibility of searching and finding judgments, impact assessments or parliamentary debates that refer to the Charter varies from Member State to Member State. Moreover, the procedural law against which the rights enshrined in the Charter are used differs in the legal systems of the 28 Member States. This further reduces the comparability of the data.

Despite these limitations, this chapter provides a unique set of information that sheds light on the Charter’s use by national courts (Section 1.1), its use in legislative processes and national parliaments (Section 1.2), and other initiatives concerning the Charter (Section 1.3).

1.1. National high courts’ use of the Charter: a mixed picture

The analysis below is based on 70 court decisions from 27 EU Member States; for **Malta**, no relevant court decision was reported. In 2014, the analysis was based on 65 court decisions from 25 Member States; in 2015, it was based on 68 court decisions from 26 Member States. Decisions in which the parties referred to the Charter but the courts’ reasoning did not do so are not covered. In many Member States, the absolute numbers of court decisions using the Charter are not easily identifiable – for example, because electronic databases covering all case law are lacking.

Moreover, the frequency of such references vary from court to court. By way of illustration: in **Lithuania**, the Constitutional Court used the Charter once, the Supreme Court used it 10 times, and the Supreme Administrative Court used it 178 times.

1.1.1. Invoking the Charter: national courts continue to ‘bring in’ the Charter

National judges continued to show awareness of the Charter by ‘bringing in’ Charter-related arguments on their own accord. In about half (51 %) of the 70 cases analysed in 2016, judges raised the Charter-based arguments. In the other half (49 %), the parties did so and the respective courts then picked these up. Judges have also been the ones to take the initiative with respect to citing the Charter in a substantial part of the analysed case law in past years. Against this background, it is welcomed that bar associations in various Member States offer Charter-specific training to legal practitioners (see Section 1.3.2).

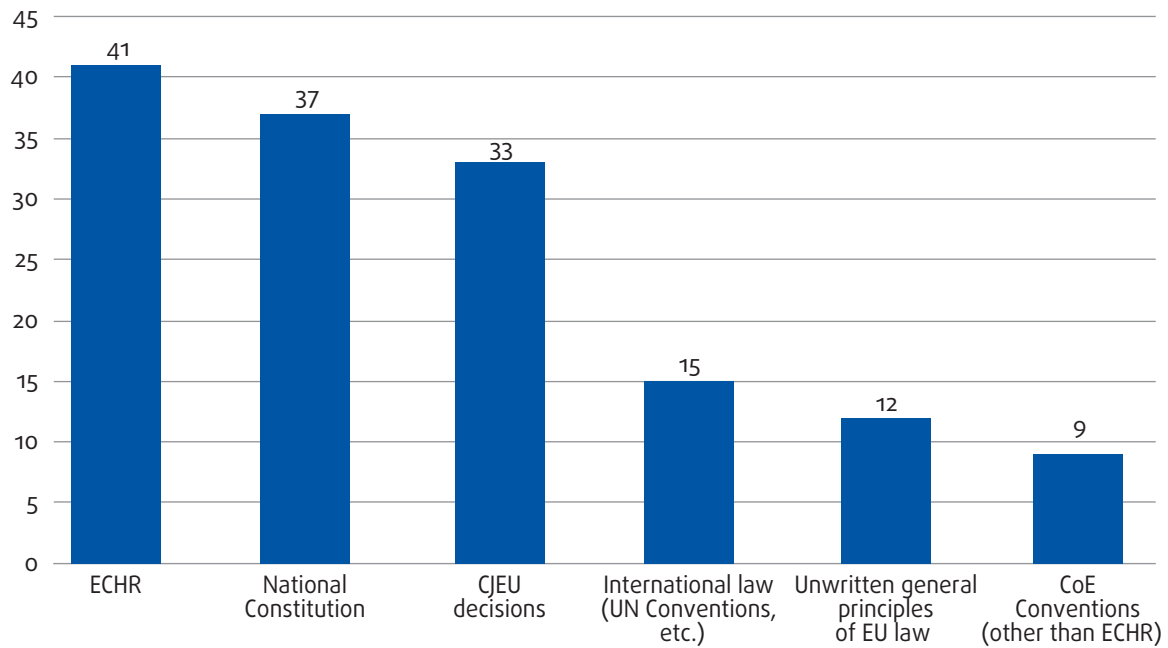
As in past years, an analysis of the court decisions issued in 2016 shows that the Charter is used in combination with other legal sources (see Figure 1.1). Likewise, just as in past years, the ECHR and national constitutional norms were the most prominent legal standards used besides the Charter. In addition, courts continued to frequently refer to (Charter-relevant) judgments by the CJEU alongside the Charter.

1.1.2. Procedural rights and policy area of freedom, security and justice remain prominent

There was also continuity in 2016 with regard to the policy areas that provided fertile ground for raising Charter arguments in national courtrooms: asylum and immigration, and criminal law matters (Figure 1.2). However, in contrast to 2014 and 2015, data protection was not a highly prominent policy area in 2016.

Just as in past years, the right to an effective remedy (Article 47) remained the provision that was most often referred to. The Charter’s field of application (Article 51) and the scope of guaranteed rights (Article 52) were the other two most frequently referred to provisions in 2016 (Figure 1.3). This means that no substantive provision of the Charter was amongst the most referred to provisions. In 2014 and 2015, the right to private and family life (Article 7) and the protection of personal data (Article 8) were among the top three articles referred to in the analysed court decisions.

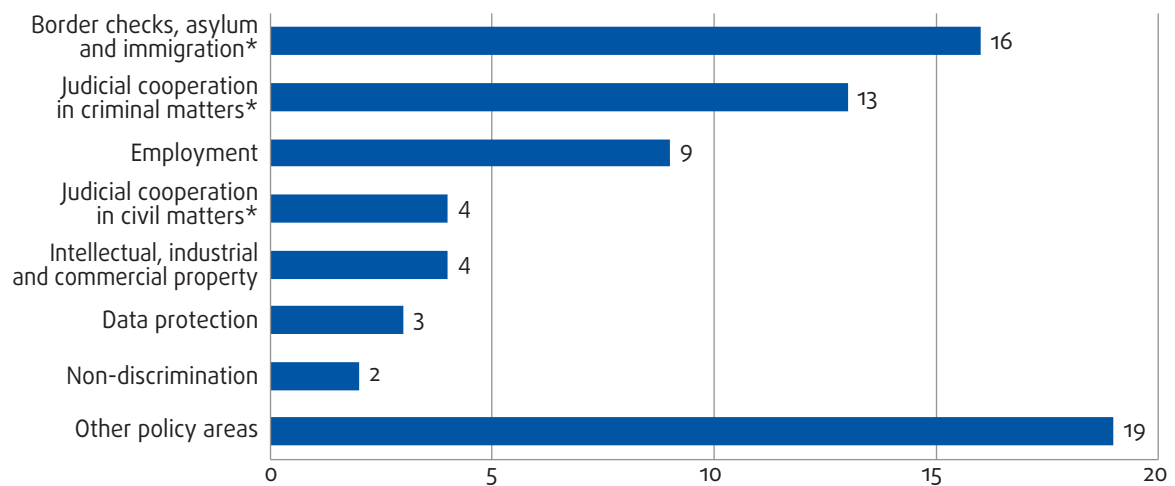
Figure 1.1: Number of references to other legal sources alongside the Charter in court decisions analysed, by legal source referred to



Notes: Based on 70 court decisions analysed by FRA. These were issued in 27 EU Member States in 2016. Up to four decisions were reported per Member State; no decision was reported for Malta. More than one legal source can be referred to in one court decision.

Source: FRA, 2016

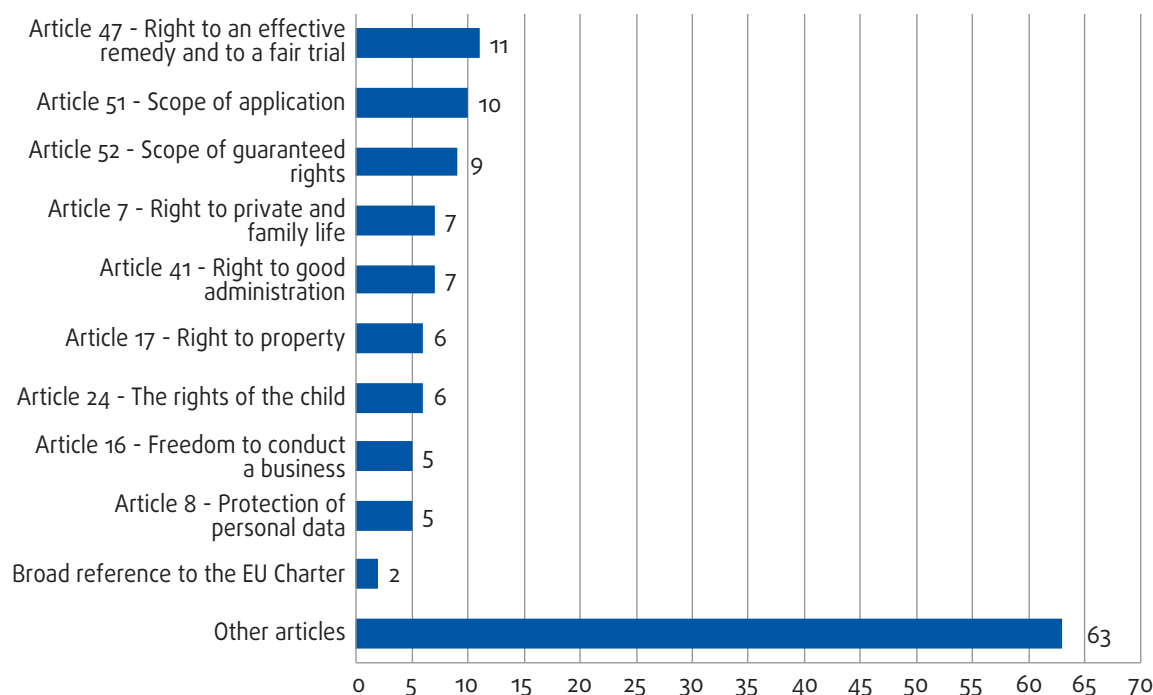
Figure 1.2: Policy areas addressed in analysed court decisions



Notes: Based on 70 court decisions analysed by FRA. These were issued in 27 EU Member States in 2016. Up to four decisions were reported per Member State; no decision was reported for Malta. The category 'Other policy areas' includes policy areas that were referred to in fewer than three analysed decisions. The categories used in the graph are based on the subject matters used by EUR-Lex.

*Taken together, these three categories form the subject matter 'Justice, freedom and security'.

Source: FRA, 2016

Figure 1.3: Number of references to Charter articles in court decisions analysed, by article

Notes: Based on 70 court decisions analysed by FRA. These were issued in 27 EU Member States in 2016. Up to four decisions were reported per Member State; no decision was reported for Malta. The category 'Other articles' includes articles that were referred to in fewer than five analysed decisions. More than one Charter article can be referred to in one court decision.

Source: FRA, 2016

1.1.3. Referring cases to Luxembourg: divergence persists

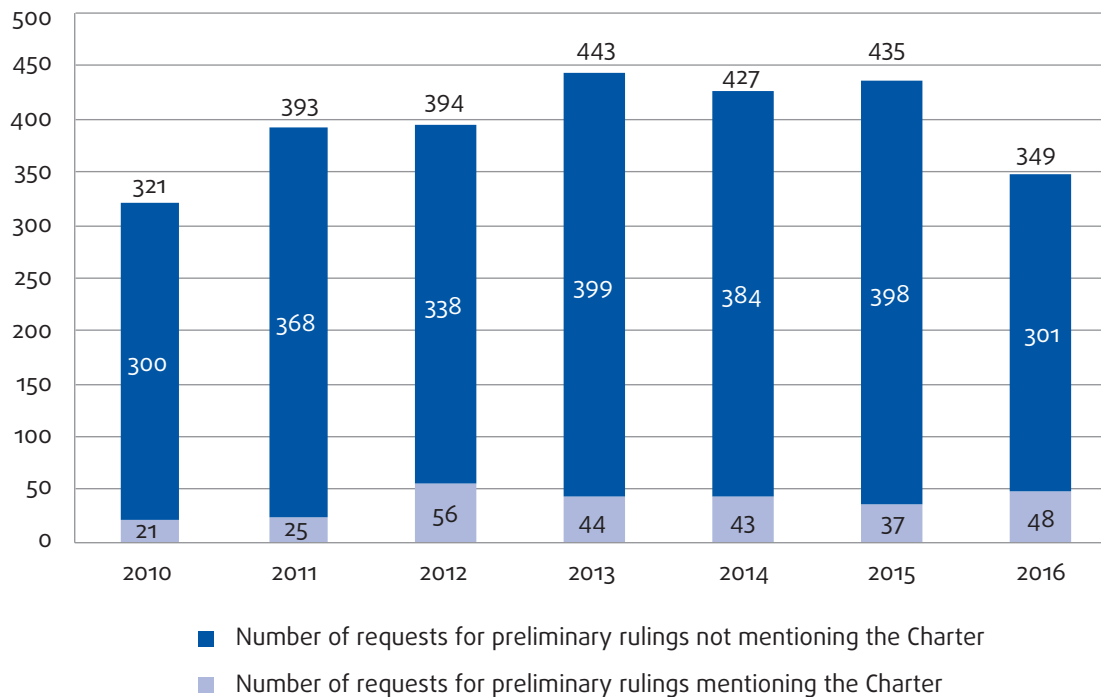
As stated at the outset, not much is known about how national courts use EU law in general, and the Charter in particular, in their day-to-day business. This goes for both the qualitative and the quantitative dimensions of national courts' work as 'EU courts' (that is, when applying EU law). This phenomenon prompted a General Advocate to speak – in his academic capacity – of a 'black box' in this regard.¹² However, national court requests for CJEU preliminary rulings shed some light on this issue.

Just as in past years, in 2016, courts from almost all Member States sent requests to the CJEU for guidance in interpreting and applying EU law provisions. No such request was sent from courts in **Cyprus**. In recent years, on average, around one tenth of these requests have referred to the Charter (see [Figure 1.4](#)). In 2016, national courts sent 349 requests for preliminary rulings, and 48 of these referred to the Charter. That is close to 14 %, which is higher than the proportions observed in the past 3 years (these were 7 % in 2010, 6 % in 2011, 14 % in 2012, 10 % in 2013 and 2014, and 9 % in 2015).

In 10 Member States, no court asked the CJEU for an interpretation in the context of the Charter. Meanwhile, other Member State courts sent quite many Charter-related requests. In **Spain**, eight initiated preliminary ruling procedures concerned the Charter (21 % of all requests sent by Spanish courts to the CJEU). In **Belgium**, this figure was seven (35 %), in **Italy** it was five (13 %), in **Hungary** it was four (29 %), and in **Poland** it was also four (27 %). Other Member States sent fewer than four such requests. Notably, there was one request each from both the **Czech Republic** and **Lithuania** – countries in which no court asked the CJEU for a Charter-related interpretation during the preceding five years.

1.1.4. Scope of the Charter: an often ignored question

Article 51 of the Charter underlines that it is addressed to Member States "only when they are implementing Union law". According to the case law of the CJEU, this means that the fundamental rights guaranteed in the legal order of the EU are applicable at the national level "in all situations governed by European Union law, but not outside such situations".¹³ However, just as in previous years, the majority of the analysed 2016 court decisions

Figure 1.4: Number of preliminary ruling requests submitted by national courts to the CJEU in 28 EU Member States, by year

Notes: The data for 2016 reflect the data saved in the CJEU database on the Curia website at the end of January 2017. The data for 2010–2015 are as published in the respective Fundamental Rights Reports. Any updates of data available on the Curia website are not taken into account.

Source: FRA, 2016 (based on Curia, [website of the CJEU](#))

did not explicitly address the questions of if and why the Charter applied to the cases at issue. The following observation about courts in **Poland** appears applicable to most Member States: national courts “refer to and apply the Charter in various ways – at times substantial, sometimes more ornamental, but very rarely ponder whether in a given case it is permissible to apply the charter as an act”.¹⁴ The borderline of the scope of EU law is not easy to draw and might raise complex questions of interpretation. A request for a preliminary ruling by the CJEU can bring clarity in this regard. However, national judges do not necessarily take this route, as shown by a competition law example from **Ireland**, where the court did not refer to the CJEU for a preliminary ruling.¹⁵ More training and awareness, as well as exchange of practices – as recommended in the *Fundamental Rights Report 2016* – might encourage more judges to explicitly address in their decisions whether or not, and why, the Charter applies in a particular case.

Likewise, just as in previous years, the 2016 sample included decisions referring to the Charter in cases that lacked a clear link to EU law. For instance, in **Bulgaria**, a court used Article 10 of the Charter (right to freedom of thought, conscience and religion) to conclude that a Muslim prisoner should have been provided with

food that was appropriate to his religious belief. The court referred to the Charter alongside the ECHR and ECtHR case law, without examining if and why EU law applied to the case.¹⁶

Judges may be more likely to explicitly address whether or not the Charter applies in a given case when they review requests for a preliminary ruling from the CJEU (see [Section 1.1.3](#)). For instance, in a case centring on a person’s affiliation with national security services and access to documents, a court in **Bulgaria** was asked to send a preliminary ruling request to the CJEU. In this context, it did address the application of EU law and the Charter, dismissing the request after concluding that EU law did not apply to the case.¹⁷ Similar conclusions were reached in **Cyprus** in a case concerning the amendment of an electoral law adopted in 2015¹⁸ and in **Portugal** in a case involving a disciplinary measure against a judge.¹⁹

“Member States have their own systems protecting fundamental rights and the Charter does not replace them. The country’s own courts must ensure respect for fundamental rights without the need to make a preliminary ruling on the questions of the law raised.”

Portugal, Supreme Court of Justice, Case 134/15.7yflsb, 23 June 2016

The analysed cases suggest that national judges are more likely to explicitly address the question of the Charter's scope where they conclude that the Charter is not applicable in the case in question; see examples from **Bulgaria**,²⁰ **Germany**,²¹ **Ireland**,²² **Poland**²³ and **Romania**.²⁴

“The determination and proclamation of affiliations of a person to state security bodies and the intelligence services of the Bulgarian National Army does not fall under any of the powers of the Union, determined by the TFEU. In this case the Bulgarian state and courts should not apply the provisions of the Charter, because EU law does not apply to those societal relations.”

Bulgaria, Supreme Administrative Court, Case No 8412/2015, 1 June 2016

Sometimes national courts do deal with the applicability of EU law in detail, as a case from **Denmark** shows.²⁵ The case concerned an applicant who argued that the obligation under national law to label his letterbox with his full name was against the rights enshrined in Article 7 (respect for private and family life) and Article 8 (protection of personal data) of the Charter. The High Court concluded that this was not a context where the Member State was implementing EU law in the sense of Article 51 of the Charter. Explicitly referring to the cases of *Fransson* (C-617/10) and *Siragusa* (C-206/13), the national court underlined that the concept of ‘implementing EU law’ requires a certain degree of connection above and beyond the matter covered by the relevant national law being closely related to EU law. The court also pointed out that the requirement that letterboxes must be equipped with a nametag was already in place before the national act implementing the Postal Services Directive was adopted. It also stressed the different purposes of the national and EU legislation. Whereas the postal services directives “have a nature of liberalisation directives and have the main purpose to regulate universal postal service”, the national act wants to “ensure the greatest possible assurance that letters are delivered to the correct addressee”. Therefore, the requirement of nametags on letterboxes was not imposed as part of implementing EU law, and the Charter of Fundamental Rights was thus inapplicable. The case was appealed to the Supreme Court, which rejected the case because the complainant passed away and his estate could not step in his place, as the case did not concern a claim to which the estate was entitled.

Just as in previous years, Article 41 (right to good administration) was referred to vis-à-vis national administrative authorities, whereas the Charter limits the reach of this provision to EU institutions. For instance, in a case from **Slovakia**, the Ministry of the Interior decided not to include a person in the programme of support and protection for victims of human trafficking.²⁶ This decision was communicated only to the International Organization for Migration, not to the applicant herself. This was the first case in Slovakia on access to justice in the context of the programme for victims of human trafficking. The applicant appealed to the Supreme Court to

clarify the consequences of accepting that the decision on non-inclusion in the programme was indeed an individual administrative act. The Supreme Court referred to Article 41 of the Charter and, while not holding it applicable as such – the court held that the right applies as a general principle of law rather than as a Charter right – it stressed the judiciary’s overall responsibility for enforcing the right to good governance.

1.1.5. The Charter as legal standard for interpreting national law

Judges use the Charter for different purposes. Often national law – mostly, but not exclusively, when falling within the scope of EU law – is interpreted in light of the Charter. Sometimes domestic constitutional reviews even include checking whether a national law is consistent with the Charter. In rare cases, the Charter forms the basis for directly granting individuals a specific right. Just as in past years, it appears that the most frequent use of the Charter before national courts takes place when interpreting national or even EU secondary law. As the Constitutional Court in **Germany** underlined, where national law “is determined by the EU directive, national authorities and courts have to interpret their respective national law in a manner consistent with the directives and have to take care to rely on an interpretation of the directives which allows a fair balance to be struck between the various fundamental rights protected by the EU legal order”.²⁷

When a court interprets national law, the Charter tends to be one among several legal sources guiding the court in interpreting national provisions. An exception is a case from **Sweden**, where the Charter was the key source referred to.²⁸ The case concerned a man who had helped a family to cross the border illegally. Normally, a person who is paid for assisting a foreigner’s entry into Sweden is sentenced to three to four months in prison. However, in this case and in light of Article 24 (the rights of the child), the court decided to change the prison time to a suspended sentence and community service because the person concerned was motivated by the desire to help children.

“[He] refused to help his brother’s acquaintances to Sweden but agreed to help a family with children. The principle of the best interest of the child has special protection under Article 24 of the EU Charter of Fundamental Rights, which should be considered applicable in cases concerning the rights of asylum seekers, which are covered by EU regulations [...] It is also noted that there is an mitigating circumstance under [...] the Penal Code for a crime that is prompted by strong human compassion.”

Sweden, Skåne and Blekinge Court of Appeal, Case B 7426-15, 5 December 2016

In a case from the **Czech Republic**, the parameter for interpretation was not the Charter itself but Council Directive 2011/36/EU on preventing and combating trafficking in

human beings and protecting its victims. This directive also refers to the Charter. The case concerned Vietnamese citizens who had signed a contract of employment and were then forced to perform hard forestry work for a year, without receiving any wages and while being prevented from leaving. They later reported this to the police, but no action was taken. In its judgment, the Constitutional Court referred extensively to the wording of the directive and thereby also the Charter, before concluding that the authorities had acted negligently.

"In this case we cannot ignore important commitments of the Czech Republic arising from EU law [...] The mentioned directive sets out [...] 'Trafficking in human beings is a serious crime, often committed within the framework of organised crime, a gross violation of fundamental rights and explicitly prohibited by the Charter of Fundamental Rights of the European Union. Preventing and combating trafficking in human beings is a priority for the Union and the Member States'."

Czech Republic, Constitutional Court, Case II. ÚS 3436/14, 19 January 2016

1.1.6. The Charter as legal standard for constitutional review

Previous Fundamental Rights Reports have shown that, in some legal systems, the Charter is used as a standard for constitutional review. This is most prominently the case in Austria where, since 2012, the Constitutional Court has developed case law establishing the EU Charter of Fundamental Rights as a standard under national constitutional law, thereby allowing the Constitutional Court to review national legislation against the Charter. Courts in **Austria** carried out such reviews in 2016. In a case concerning a Somali citizen who applied for international protection, the Federal Office for Immigration and Asylum denied the appellant asylum. Thereupon, the appellant submitted a complaint to the Federal Administrative Court, which rejected it without conducting a public hearing. According to the Constitutional Court, the Federal Administrative Court violated Article 47 (right to an effective remedy and a fair trial) by not conducting a public hearing.²⁹ In another case concerning a decision to return a migrant to his country of origin, the Constitutional Court for the first time recognised the direct applicability of the third paragraph of Article 47, which stipulates that legal aid "shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice".³⁰

"Fundamentally, a contradiction between a general Austrian provision and Union law (only) leads to the non-applicability of the Austrian provision, which is to be acknowledged incidentally by all state organs [...], but not to its repeal (VfSlg 15.189/1998). In principle, the Constitutional Court has no competence to examine general Austrian legal provisions in light of European Union law, unless there is a violation of a right which is guaranteed by the Charter and which is similar in formulation and assertiveness to constitutionally guaranteed rights of the Austrian constitution."

Austria, Constitutional Court, Case G447/2015, 9 March 2016, para. 3.2.5

Romania's constitution explicitly provides for the supremacy of EU law over national law (in Article 148, para. 2). A Romanian court set aside a national provision because its application was seen as not in line with Article 49, para. 3, of the Charter ("the severity of the penalties must not be disproportionate to the criminal offence"). The case concerned a person who was charged with 138 crimes for running an online scam consisting of promising fake jobs and asking jobseekers for money. According to Romania's Criminal Code, courts have to establish a sentence for each crime and then apply the harshest sentence, to which they need to add one third of the sum of all the other sentences, which for this case would have meant applying a total prison sentence of 26 years. The court invoked Article 49 (principles of legality and proportionality of criminal offences and penalties), noted that the Charter overrules contradictory national law, and reduced the sentence to 10 years in prison.

"The Charter of Fundamental Rights of the European Union, which provides in Article 49, para. 3, that 'penalties must not be disproportionate to the offence', has the same legal value as the Treaties according to Article 6 of the Treaty on European Union and is binding on both the judiciary and the legislature, according to Article 148 of the Constitution [...] In respect of this and keeping in mind that first of all we should offer priority to Community law, then to constitutional law and after that to criminal legislation, the Court establishes that even when applying a penalty the provisions of Article 49, para. 3, of the Charter of Fundamental Rights of the European Union and Article 53 of the Constitution establishing the principle of proportionality are imperative."

Romania, Tribunalul Arad, decision of 25 January 2016

When national courts review national law against the Charter, they may also interpret the Charter itself. A detailed assessment was offered in a case from the **United Kingdom**. In the case, tobacco product manufacturers appealed against the refusal of their application for judicial review of national legislation that restricts their ability to advertise their brands on tobacco packaging or products. They argued that the legislation breached Article 17 of the Charter (right to property). The court dismissed all of the appellants' arguments and analysed Article 17 in detail. It admitted that a registered trademark was a type of property, but added that, before one can say that a person's proprietary rights have been affected, it is necessary to identify what those rights are. Some of the claimants argued that registration of a trademark grants a positive right to use the mark on goods in the class for which it has been registered. The Secretary of State on the other hand maintained that a trademark confers purely negative rights, i.e., the right to stop someone else from doing things. The court concluded: "We accept that article 17 of the Charter protects proprietary rights in intellectual property. However we do not accept that article 17 changes the nature of

those rights. If (for example) the rights conferred by a trademark are only negative rights, we cannot see that article 17 creates positive rights.”³¹

An interpretation of the Charter does not necessarily go hand in hand with its application in the concrete case at hand, as a decision by the Cassation Court in **Belgium** shows: it interpreted Article 48 of the Charter while denying its applicability as such.³²

1.1.7. The Charter as directly conferring individual rights and providing wider protection than national law

The Charter’s added value as part of EU law becomes most obvious where the substantial scope of its provisions goes beyond that of comparable national norms and, in addition, these provide individuals directly with individual rights. National courts rather seldom explicitly interpret Charter provisions as granting individual rights.

In a case from the **United Kingdom**, the court interpreted the Charter itself. The case concerned a Nigerian national who had been continuously resident in the UK for 25 years. His two daughters were both British citizens, aged 13 and 11. He received a deportation order on grounds of public policy. The court of appeal found that the court of first instance had failed to acknowledge the existence of a right conferred on both of the appellants’ children by the Charter.³³ The third paragraph of Article 23 states: “Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.” This Charter provision formed a successful ground of appeal and provided a free standing right in the context of immigration law.

“Article 24 (3) creates a free standing right. It may, of course, be viewed as the unequivocal articulation of a concrete ‘best interests’ right and, on this analysis, is a development, or elaboration, of Article 24 (2). Furthermore, given the exception formulated in the final clause of Article 24 (3), the nexus with Article 24 (2) is unmistakable.”

United Kingdom, Upper Tribunal (Immigration and Asylum Chamber), Case UKUT 106 (IAC), 13 January 2016

In **Slovenia**, a court ruled that Article 6 of the Charter (right to liberty and security) in combination with Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (the Reception Conditions Directive) provides an individual right. The directive was supposed to be incorporated into Slovenian law by 20 July 2015. However, that was delayed. Despite this delay and in

line with the case law of the CJEU, the directive could be directly applied in Slovenian law. The case concerned a citizen of Tunisia, who first entered Slovenia on 4 February 2016. He was intercepted by the police and was not carrying any identity documents. During the procedure, he applied for international protection. The authorities decided to limit the applicant’s freedom of movement to the premises of the Aliens Centre for a maximum period of three months, with a possible extension for an additional month. The decision was based on provisions of the International Protection Act (*Zakon o mednarodni zaščiti*), which the court of appeal found to be partly not in line with the Reception Conditions Directive. The court revoked the decision and issued an interim decision to release the applicant from detention immediately after receipt of the judgment.

“The Administrative Court took as a starting point [...] the possibility of a direct effect of a provision of a Founding Treaty, which establishes a subjective right for an individual. This principle was reaffirmed in subsequent judgments a while before the establishment of subjective justiciable rights from the Charter. The right enshrined in Article 26 (2) and Article 9 (3), second subparagraph of the Reception Conditions Directive in connection with Article 6 of the Charter is without a doubt this kind of a subjective right and in the given part [...] it can be exercised without any implementation measures.”

Slovenia, Administrative Court, Case I U 246/2016, 18 February 2016, para. 40

That the Charter can be directly invoked is in practical terms most relevant where the Charter’s provisions go further than national law, including constitutional law. In the **Czech Republic**, the Charter was instrumental in a case concerning a German national arrested and prosecuted for being a member of a criminal group that trafficked drugs from the Czech Republic to Germany.³⁴ However, she had already been prosecuted and sentenced for some of these acts in Germany. The Constitutional Court deemed her constitutional complaint justified and found a breach of the legal principle *ne bis in idem*. The court stressed the extended transnational protection of the *ne bis in idem* principle as laid down in the Charter, compared with the more limited scope of the corresponding constitutional provision. Consequently, the decisions of the authorities involved in the criminal proceedings were annulled.

“The legal principle ‘ne bis in idem’ applies only to criminal proceedings in the state’s jurisdiction, so anyone could be prosecuted for the same act in another state. However, in the European Union (hereinafter the ‘EU’), thanks to Article 50 of the Charter, the legal principle ‘ne bis in idem’ applies to all EU Member States when EU law is applied, as a follow-up to Article 54 of the Convention Implementing the Schengen Agreement from 1985.”

Czech Republic, Constitutional Court, Case II. ÚS 143/16, 14 April 2016

The potential of EU fundamental rights was also underlined by the Constitutional Court in **Portugal**, which stressed that “the specific rights conferred on citizens of the European Union and coming into force following the Treaty of Lisbon, take on the true nature of fundamental rights [...] Today, the Charter has been granted the same legal status as the Treaties, therefore the infringement of it, whether by Member States or by the European Union, may be contested in court.”³⁵

The Charter’s effect in areas where it provides more protection than the corresponding constitutional norm was shown in **Slovakia**. The case concerned the area of consumer protection. A telephone company took one of its clients to court for not paying his bills. The company argued that, by affording specific protection to consumers, the Consumer Protection Act interfered with the principles of a fair trial and equality of arms set out in the Slovak Constitution and was hence unconstitutional. The court acknowledged that the Slovak Constitution does not provide a specific right to consumer protection and that the Charter thus provides a higher level of consumer protection than the constitution. However, it found that, as the Charter is part of the national legal order, Slovakia is bound by its provisions. The court also referred to the Consumer Protection Act’s legislative history, which showed that the motivation for including the provision at issue in the act was to address problems found in practice and to ensure effective protection of consumers’ rights, embodied in Article 169 of the TFEU and Article 38 of the Charter.

“The Charter of Fundamental Rights of the European Union (the ‘EU Charter’) recognises the same values as the Constitution; however, the area in which it provides protection of rights beyond the Constitution is precisely the area of consumer legal relationships. In this respect, Article 38 of the Charter should be noted, according to which the states’ policies shall ensure a high level of consumer protection. Given the wording of Article 7 of the Constitution, in light of the Lisbon Treaty, the Charter is part of the legal order of the Slovak Republic. The Charter obliges the Slovak Republic, as an EU Member State, to ensure a high level of consumer protection and the Court of Appeal considers that the provisions of Article 5b of the Consumer Protection Act are among the rules that lead to the fulfilment of Article 38 of the Charter.”

Slovakia, Regional Court Prešov, Case 17Co/286/2015, 28 June 2016

As also reported last year, in some – admittedly very rare – cases, national courts raise the central question of whether the Charter applies only to the relationship between individuals and the state (that is, vertically) or also to relations between two individuals (so-called horizontal applicability).³⁶ A case from **Denmark** is of interest in this context. It concerned severance payments by employers in the event of dismissals. The national law on legal relationships between employers and employees provided that in the event of a salaried employee’s dismissal, the

employer shall, on termination of the employment relationship, pay a sum to the employee. This sum should correspond to one, two or three months’ salary depending on the length of the employment. The law explicitly stated in paragraph 2(a)(3) that this rule does not apply if, at termination, the employee will receive an old-age pension from the employer. The first instance court declared this provision to be in violation of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (the Employment Equality Directive).

The Supreme Court referred the case to the CJEU for a preliminary ruling. The court’s request did not concern the Charter but the application of the Employment Equality Directive and the general principle of EU law prohibiting age discrimination.³⁷ The CJEU concluded that this general principle of law, as given concrete expression by the Employment Equality Directive, must be interpreted as precluding – including in disputes between private persons – a national provision such as the one at stake.³⁸ The Supreme Court acknowledged that it is for the CJEU to decide on the interpretation of EU law. However, disagreement arose as to how to interpret national law. The judgment states that paragraph 2(a)(3) could not be interpreted “*contra legem*” in accordance with the directive. Regarding the general principle of EU law, the majority of 8 of 9 judges held that the Accession Act on Denmark’s accession to the EU did not contain any provisions allowing an unwritten principle to prevail over national law when this applied between two private parties. In this context, the Supreme court stressed that the Charter does not extend the competencies of the EU and that the ratification of the Lisbon Treaty did not imply legal obligations for individuals. (Judge Jytte Scharling observed in a dissenting opinion that the general principle of law, prominently developed by the CJEU in the 2005 *Mangold* judgment, was well known before Denmark ratified the Lisbon Treaty.³⁹) Therefore, Article 21 of the Charter (non-discrimination) was not – so the court – directly applicable in Denmark. This approach was described by some as an expression of ‘sovereignism’ and an attempt to ‘domesticate EU law’.⁴⁰

“The Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties [...] and it appears from the Foreign Minister’s answer [...] that the Charter does not imply legal obligations for individuals. It follows from the foregoing that the principles developed or established on the basis of TEU Article 6 (3) are not made directly applicable in Denmark pursuant to the Accession Act. Similarly, the provisions of the Charter, including the Charter’s Article 21 on non-discrimination, are not made directly applicable in this country pursuant to the Accession Act”.

Denmark, Supreme Court, Case 15/2014, 6 December 2016

1.2. National legislative processes and parliamentary debates: Charter of limited relevance

1.2.1. Assessment of fundamental rights impact

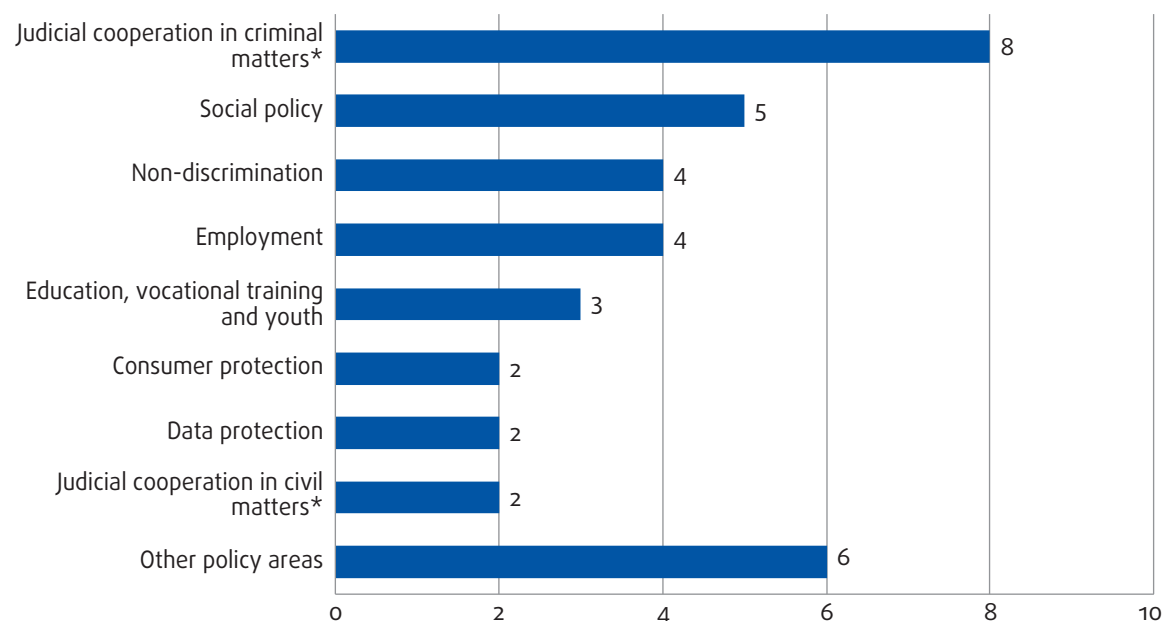
As noted in past Fundamental Rights Reports, Member States have procedures in place for assessing economic, environmental, social or other impacts of bills.⁴¹ Many of these procedures explicitly take effects on fundamental rights into consideration. However, such procedures tend not to refer to EU law or the Charter, although a significant part of national legislation can be expected to fall within the scope of EU law. Despite the absence of such explicit references to the Charter in norms for national impact assessment procedures, the Charter is sometimes referred to in practice. Indeed, in only three Member States could no examples of Charter-related impact assessments be identified over the last three years (2014-2016): **Cyprus, Ireland and Malta.**

Looking at the 36 examples of impact assessments reported in 2016, it appears that the area of criminal law is most prone to raising Charter concerns during impact assessments (Figure 1.5). This is in line with last year's finding, with the difference that in 2015 data protection also played a major role.

In addition, in impact assessments, the Charter appears to be referred to alongside other international legal instruments, making it difficult to track the relative relevance and impact of such Charter references. For instance, in the **Netherlands**, the Council of State alerted the government to the fact that the law regarding the privatisation of casinos raises data protection issues; the Gambling Authority will process personal data of the licensees and they, in turn, will process data of their staff and customers based on closed-circuit television footage. The Council of State called on the government to take into account Article 10 of the Constitution, Article 8 of the Charter and Article 8 of the ECHR.⁴²

Many of the references were also brief and general in nature, most of them integrated in the explanatory memoranda of the bills in question. It should be noted that, of the 36 impact assessments analysed, only 14 involved bills implementing EU law.

Figure 1.5: Number of impact assessments referring to the Charter, by policy area



Notes: Based on 36 impact assessments analysed by FRA. These were carried out in 17 EU Member States in 2016. Up to four assessments were reported per Member State; no assessments were reported for Cyprus, the Czech Republic, Denmark, Germany, Ireland, Luxembourg, Malta, Poland, Sweden, Slovakia and the United Kingdom. The category 'Other policy areas' includes policy areas that were referred to in only one analysed impact assessment. The categories used in the graph are based on the subject matters used by EUR-Lex.

**Taken together, these two categories form the subject matter 'Justice, freedom and security'.*

Source: FRA, 2016

One example is **Hungary's** Draft Act of Parliament on the amendment of acts regulating European Union and international cooperation in criminal matters and on certain aspects of criminal law.⁴³ The corresponding memorandum refers to Article 12 of Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States, which stipulates that “[t]he person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.”⁴⁴ The impact assessment argues that, since the Act on Cooperation in Criminal Matters does not contain this possibility of release, a corresponding amendment should be introduced. The explanatory memorandum further argues that, in light of the ECHR and the EU Charter of Fundamental Rights, the national authorities are obliged to examine the possibility of using less restrictive coercive measures, such as house arrest or bans on leaving the place of residence, and considering detention as a last resort.

1.2.2. Assessment of fundamental rights compliance

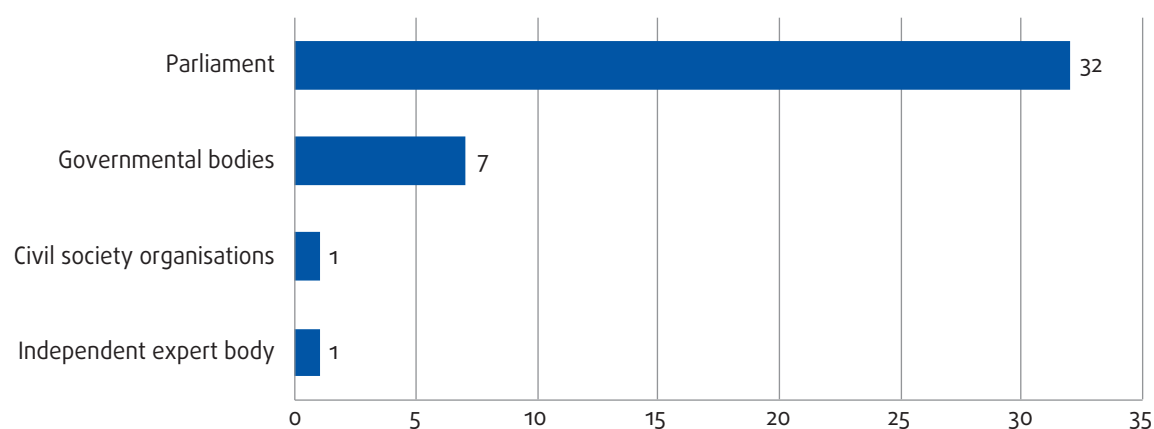
Whereas impact assessments are not necessarily a legal exercise, the legal scrutiny of a bill is a legal assessment. There is another difference: an impact assessment is typically carried out when a bill has not yet been fully defined, so that various legislative options can be compared. In contrast, an assessment of legal compliance is based on the specific wording of a final bill. However, there are systems that do not neatly differentiate between impact assessments and legal scrutiny.

All Member States have some sort of procedure in place to check bills against fundamental rights standards, primarily those enshrined in their constitutional frameworks. However, international sources, mainly the ECHR, are also often referred to in such procedures. Whereas in some Member States EU law is explicitly mentioned as a relevant standard to be looked at, this is not true of the Charter specifically. Nevertheless, exercises of legal scrutiny do sometimes refer to and use the Charter. Indeed, only in a few Member States were no such examples reported both for 2016 and 2015 (**Cyprus, Estonia, Italy, Malta** and **Slovakia**). Of the 41 examples of legal scrutiny reviewed for 2016, which involve 17 Member States, most were carried out by parliaments (Figure 1.6).

The nature of Charter references in legal assessments varies substantially. Some of the analysed examples contain a rather superficial statement that no conflicts with the Charter were identified. Others underline that the very intention of the bill is to protect certain rights. In other constellations, the Charter is mentioned as the guideline that should inform the national legislature how best to incorporate EU legislation into national law. This was the case in **Germany**, for instance, where the Bundestag held that, in the context of incorporating Directive 2014/15⁴⁵ into national law, punishing people by prohibiting their employment in certain occupations is a serious interference with Article 15 of the Charter (freedom to choose an occupation and right to work) and that such bans would be legitimate only in extreme cases.⁴⁶

However, there were also examples where the Charter was used to express strong reservations about proposed legislation on the basis of fundamental rights.

Figure 1.6: Number of legal assessments referring to the Charter, by author



Notes: Based on 41 legal assessments analysed by FRA. These were issued in 17 EU Member States in 2016. Up to three legal assessments were reported per Member State; none were reported for Croatia, Cyprus, Estonia, France, Ireland, Italy, Latvia, Malta, Slovakia, Spain and Sweden.

Source: FRA, 2016

In **Lithuania**, changes to the law on the status of aliens raised Charter-related concerns. The proposal intended to remove provisions guaranteeing that refugee or other status be withdrawn only after the available remedies are explained and the person concerned is invited to comment orally or in writing. The European Law Department, a government body that carried out the scrutiny, was of the opinion that the proposal would contradict EU law, including Article 47 of the Charter.⁴⁷ In **Austria**, the Judges Association identified tensions between a bill in the area of asylum law and Articles 18 (right to asylum), 19 (protection in the event of removal, expulsion or extradition) and 47 (right to an effective remedy and to a fair trial) of the Charter.⁴⁸ In **Slovenia**, the revised Schengen Borders Code and an EU regulation for the establishment of an entry/exit system raised serious Charter-related concerns on the part of the Information Commissioner, who called for the proportionality of measures to be ensured, for restrictions on the purpose of the use of information gathered and for appropriate time limits for the retention of personal information.⁴⁹

Compatibility with the Charter is raised not only where a Member State is implementing EU law. In fact, this was the case in only 21 out of 41 examples reported for 2016. For instance, in **Romania**, the Legislative Committee was concerned about a proposed law to ban organisations, symbols and acts of a communist nature and to ban promoting the cult of persons guilty of crimes of genocide against humanity and war crimes. These concerns were based on, among

other considerations, Article 12 (freedom of assembly and association) and Article 21 (non-discrimination) of the Charter.⁵⁰

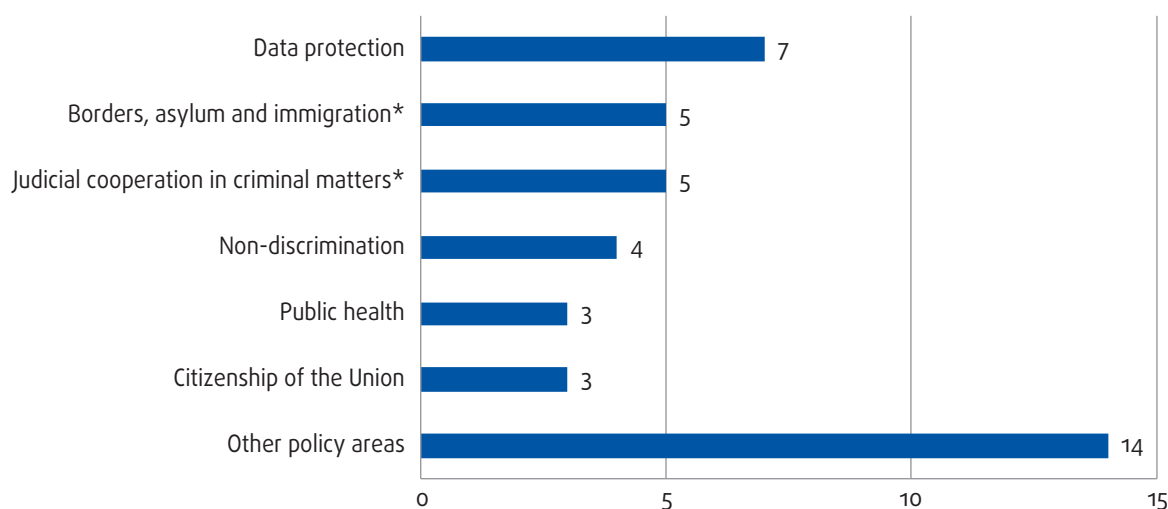
As in past years, amongst the examples reported for 2016, the area of data protection again appears to be the most prone to raising Charter concerns (Figure 1.7).

1.2.3. National legislation

As outlined above, the Charter is sometimes referred to in draft legislation and accompanying documents. However, it is only rarely mentioned in the text of adopted legislation. The evidence collected in 2016 contains 19 examples of explicit references to the Charter in the legislation of 12 Member States.

France amended its Code of Criminal procedure 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 ECHR and the Charter.⁵¹ A similar provision was enshrined in **Germany**’s Bill to amend the Act on International Mutual Legal Assistance in Criminal Justice Matters.⁵² Charter references are sometimes simply repetitions of such references found in the EU legislation incorporated into national law – as, for instance, in **Greek** legislation on extradition.⁵³

Figure 1.7: Number of legal assessments referring to the Charter, by policy area



Notes: Based on 41 legal assessments analysed by FRA. These were issued in 17 EU Member States in 2016. Up to three legal assessments were reported per Member State; none were reported for Croatia, Cyprus, Estonia, France, Ireland, Italy, Latvia, Malta, Slovakia, Spain and Sweden. The category ‘Other policy areas’ includes policy areas that were referred to in fewer than three analysed assessments. The categories used in the graph are based on the subject matters used by EUR-Lex.

* Taken together, these two categories form the subject matter ‘Justice, freedom and security’.

Source: FRA, 2016

However, as in previous years, there are also examples of Charter references that go beyond the technical implementation of EU legislation. In 2016, these examples covered areas such as gender equality and identity⁵⁴ and lesbian, gay, bisexual, transgender and intersex (LGBTI) issues⁵⁵ (in **Spain**); disability⁵⁶ (in **Italy**); consumer protection⁵⁷ (in **Germany**); legal aid (in **Austria**⁵⁸ and **Slovakia**⁵⁹); the regulation of the accountancy profession⁶⁰ (in **Malta**); education⁶¹ (in **Belgium**); and the death penalty⁶² (in **Cyprus**).

“The publication of sanctions and measures and of any public statement by the Board shall respect fundamental rights as laid down in the Charter of Fundamental Rights of the European Union, the Constitution of Malta and the Convention for the Protection of Human Rights and Fundamental Freedoms; in particular the right to respect for private and family life and the right to the protection of personal data.”

Malta, Article 16 of the Act to introduce amendments to the Accountancy Profession Act and to other Laws and to implement Directive 2014/56/EU and certain provisions of Regulation (EU) No. 537/2014 (Act XXXVI) of 2016

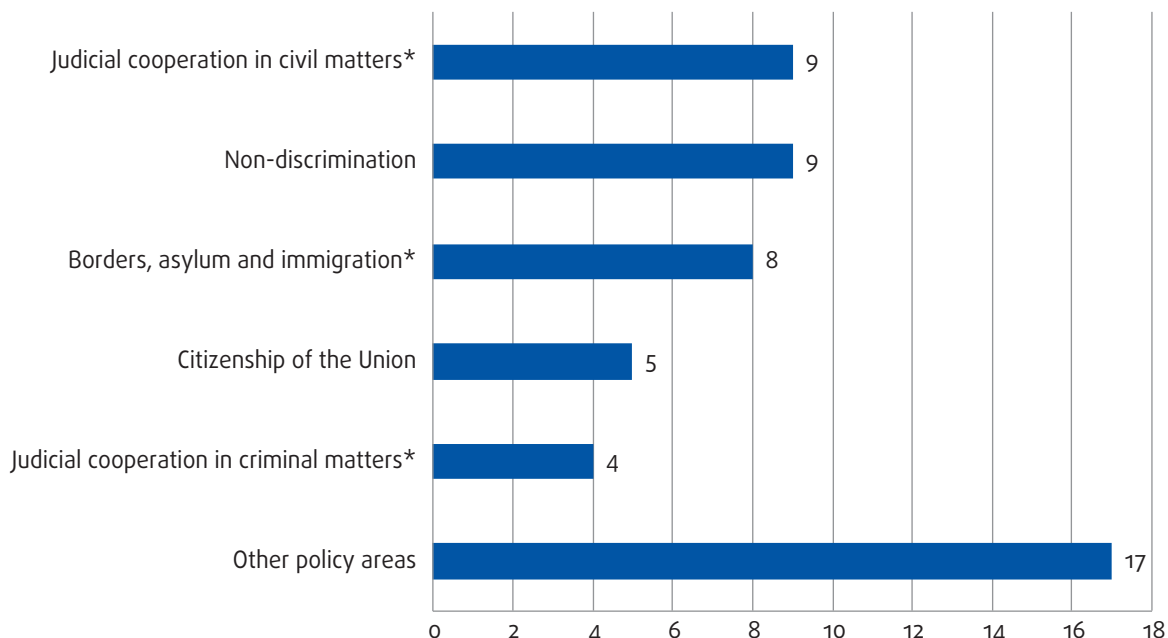
asylum, terrorism, data protection, the death penalty and criminal matters, discrimination, the right to marry, freedom of speech, legal aid, non-discrimination, the rights of persons with disabilities, and media freedom, among others. FRA collected information about 52 examples of such Charter references registered in parliamentary debates of 20 Member States (Figure 1.8). The Charter was often invoked to argue for amendments to bills, as in **Germany**, where a member of parliament stated that a total ban of contact on arrested persons suspected of terrorism violates Articles 47 and 48 of the Charter.⁶³ Furthermore, in two written declarations, a political group explained its opposition to the decision of the Petitions Committee of the German Bundestag declining petitions against the reintroduction of telecommunication data retention. They claimed that the indiscriminate retention of telecommunication data is a disproportionate interference with fundamental rights and a violation of the Charter.⁶⁴ Similarly, in **Poland**, a member of parliament asked if the draft of an anti-terrorism law was in line with the provisions of the Charter.⁶⁵

1.2.4. Parliamentary debates

Parliamentary debates in 2016 also occasionally referred to the Charter. The context of such references included

The Charter has also been mentioned as an argument in favour of adopting laws. For instance, in **Italy**, a member of parliament stressed that the approval of Draft Law

Figure 1.8: Number of identified parliamentary debates referring to the Charter, by policy area



Notes: Based on 52 parliamentary debates analysed by FRA. These took place in 20 EU Member States in 2016. Up to five debates were reported per Member State; no parliamentary debate was reported for Belgium, the Czech Republic, Estonia, Latvia, Luxembourg, Malta, Portugal and Romania. The category ‘Other policy areas’ includes policy areas that were referred to in fewer than four analysed parliamentary debates. The categories used in the graph are based on the subject matters used by EUR-Lex.

** Taken together, these three categories form the subject matter ‘Justice, freedom and security’.*

Source: FRA, 2016

no. S 2232 on support to persons with disabilities deprived of family support would contribute to the implementation of not only the Convention on the Rights of People with Disabilities, but also Articles 22 and 26 of the Charter.⁶⁶ In **Hungary**, two members of parliament submitted a proposal for a parliamentary resolution on the reduction of wage inequality between men and women. They argued that the government should come forward with a legislative proposal to comply with the Charter.

“If [the Government does not propose legislation] we will exercise our rights as Members of Parliament and will submit draft laws in the near future, all the more so because we would like to comply with Article 23 of the EU Charter [equality between women and men], which makes the Government’s obligation unequivocal in this field.”

Lajos Korozs, Member of Parliament, Hungary, 07.11.2016 session of the Hungarian Parliament; see also Proposal for Parliamentary Resolution no. H/11718 on narrowing the gap in wages between genders (H/11718 határozati javaslat a nemek közötti bérszakadék mérsékléséről)

The Charter may also be referred to in order to identify (unintended) effects of a newly adopted law, as happened in the **Netherlands**.⁶⁷ A member of parliament asked if a new Act on the deregulation of employment relationships might in practice lead to violations of Article 6 (the freedom to conduct a business). The new law was introduced to prevent employers from making use of sole traders (business entities owned and run by one natural person) in a manner that actually resembles employment relationships. According to the member of parliament, many sole traders have now lost their jobs because employers avoid approaching them so that they are not accused of hiring them as employees.

The Charter was also referred to outside the context of concrete legislative proposals. For instance, in **Denmark**, a parliamentary resolution on strengthening data protection recommended linking the Danish Data Protection Agency more closely to the parliament and quoted in this context the Danish Council of Digital Security,⁶⁸ which had stated that it “does not believe that the Data Protection Agency with its current location under the Ministry of Justice meets the requirement of independence as set out in, for example, the EU Charter of Fundamental Rights”.⁶⁹ In **Ireland**, a member of parliament asked the Deputy Prime Minister about her views on whether Ireland may be in breach of its fundamental obligations under Article 47 of the Charter if it forces companies to be represented by lawyers and does not offer any regime for legal aid for companies.⁷⁰

“I am aware of Case C-258/13 regarding Article 47 of the European Union Charter of Fundamental Rights which was heard by the European Court of Justice. While there are no plans at present to introduce legal aid for the type of commercial enterprise referred to, the situation is kept under review in my Department.”

Ireland, Deputy Frances Fitzgerald, Written Answers Nos. 160–173, 12 July 2016

In **Poland**, the Commissioner for Human Rights, when presenting his annual report to parliament, referred to the widely discussed case of a same-sex couple who wanted to marry in another EU Member State. One of the partners was Polish, but he could not obtain a certificate from the Polish Civil Status Office stating that he was not married to anyone else, since the authorities stated that same-sex marriages were not recognised under Polish law. The commissioner stated that such a refusal was not justified under EU law and the Charter of Fundamental Rights.

“Ladies and gentlemen, in my opinion, and I would like to underline it once more, Article 18 of the Constitution does not make provision for same-sex marriages. [...] However, in the case of Polish citizens – and there are some of them – who want to enter a same-sex marriage abroad, e.g. in Spain, Belgium, the Netherlands, with their partner who comes from one of these countries, in my opinion and in accordance with the provisions of the Treaty on European Union, the Charter of Fundamental Rights and the freedom of movement as well as EU citizenship, the Polish state should not cause any problems or difficulties for these people to do so.”

Poland, Commissioner for Human Rights, Sejm Rzeczypospolitej Polskiej Kadencja VIII, Sprawozdanie Stenograficzne z 24. posiedzenia Sejmu Rzeczypospolitej Polskiej w dniu 5 września 2016 (Sejm’s term of office VIII, manuscript of 24th meeting on 5 September 2016)

1.3. National policy measures and training: initiatives lacking

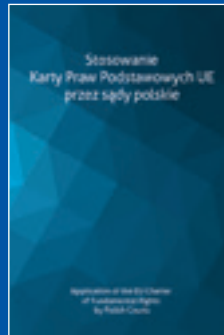
1.3.1. Policies referring to the Charter

Article 51 of the Charter obliges Member States to respect the rights it covers, observe its principles, and “promote the application thereof in accordance with their respective powers”. However, as in past years, the research revealed hardly any relevant public policies specifically aimed at promoting the Charter. Twenty-six Charter-related policy measures from 13 Member States were reported to FRA in 2016. However, many of these are only peripherally related to the Charter. Sometimes the Charter is vaguely referred to in policy documents that promote human rights or have a fundamental rights dimension. By way of illustration: the French Community in **Belgium** refers, in a document related to its reception programme for immigrants, to the requirement that the fund for asylum, migration and integration must respect the rights and principles enshrined in the Charter.⁷¹ Moreover, there are hardly any examples of Member States analysing how the Charter is used in legal practice. **Poland** looked into the Charter’s use before national courts and **Sweden** announced, in a document concerning the government’s strategy for work on human rights, that it would review the Charter’s application in Sweden.⁷²

Promising practice

Studying the use of the Charter at national level

A bilingual volume entitled *Stosowanie Karty Praw Podstawowych UE przez sądy polskie / Application of the EU Charter of Fundamental Rights by Polish Courts* was published at the end of 2016. Its nine contributions analyse in detail how the Polish judiciary uses the Charter.



The book, edited by the Ministry of Foreign Affairs of **Poland**, is a follow-up to a conference that took place on 25 September 2015. More than 100 participants – representatives of all legal professions, civil servants and academics – discussed complexities in the interpretation and application of the Charter as they emerge in the relevant case law. To maximise the practical impact of the legal analysis, the publication will be made available online and distributed in print to appellate and district courts, administrative courts, national and regional organisations for legal professionals, and academic centres/universities.

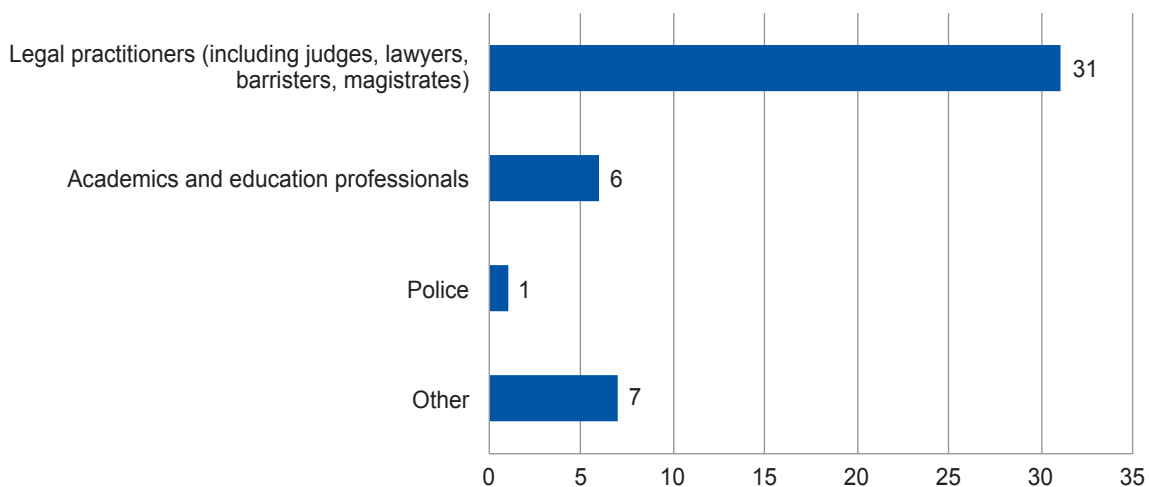
For more information, see Poland, Ministry of Foreign Affairs, Conference on application of EU Charter of Fundamental Rights by Polish courts, press statement, 26 September 2015

1.3.2. Training related to the Charter

When it comes to training, 2016 offers a more active picture. There appears to be an understanding that, the better legal practitioners are trained, the better the services they deliver. The European Commission’s official aim is to ensure that half (around 700,000) of all legal practitioners in the EU are trained on EU law or on the national law of another Member State by 2020. According to the report *European Judicial Training 2016*, “more than 124 000 legal practitioners (judges, prosecutors, court staff, lawyers, bailiffs and notaries) as well as trainees of these professional groups took part in training activities on EU law or on the national law of another Member State” in 2015.⁷³ However, only about 6 % of these training activities focused on fundamental rights. This relatively low figure corresponds to the fact that the agency’s Franet partners have often found it difficult to identify training activities focused on the Charter.

Forty-five Charter-relevant training programmes in 22 EU Member States were reported for 2016. The titles of fourteen of these referred to the Charter. Hence, the majority of the identified courses were not exclusively focused on the Charter, but rather addressed it alongside EU law or the ECHR. This is in line with past FRA advice – namely, to provide training that puts the Charter in context and explains the interactions between the different human rights sources and systems, be it the ECHR and Council of Europe sources or UN standards and sources and the fundamental rights enshrined in national constitutional law.

Figure 1.9: Number of identified training events, by main target audience



Notes: Based on 45 training events analysed by FRA. These took place in 22 EU Member States in 2016. No training was reported for Belgium, the Czech Republic, Cyprus, Estonia, Latvia, and Slovakia. The category ‘Other’ refers to training events targeting public sector employees, non-governmental organisations, children and the general public.

Source: FRA, 2016

Promising practice

Improving legal practitioners' Charter knowledge

The EU-funded project Active Charter Training through Interaction of National Experiences (ACTIONES) is coordinated by the EUI Centre for Judicial Cooperation in **Italy**. It involves 17 partners: seven academic institutions, a Europe-wide association of judges, and nine national institutions responsible for training judges and lawyers. It aims to improve the understanding and knowledge of the Charter among European legal practitioners and to ensure its better and swifter application in national legal practices. It also seeks to familiarise legal practitioners with how European and national courts can interact. In 2016, ACTIONES facilitated a series of transnational training workshops. The Judicial Academy (**Croatia**), the Superior School for Magistracy (**Italy**), the National Institute for Magistracy (**Romania**), the Judicial Training Centre (**Slovenia**) and the Judicial School (**Spain**) hosted such workshops, each with a specific focus (consumer protection, migration and asylum, non-discrimination, effective judicial protection). The workshops endorsed a bottom-up approach, whereby academics and practitioners exchange views directly, in light of their real needs and difficulties as highlighted by practice.

Another transnational and EU-funded initiative – called 'Judging the Charter' – was launched in September 2016. It aims to increase judges' and other legal professionals' knowledge in relation to the Charter. In particular, it aims to share how the judiciary and academia interpret crucial questions relating to the Charter's applicability and the rights and principles it enshrines. One focus of the project will be the role of Charter rights in asylum cases. Expert institutions from **Austria, Croatia, Greece, Italy** and **Poland** are carrying out this project, which will last until August 2018.

For more information, see Active Charter Training through Interaction of National Experiences (ACTIONES); Judging the Charter

Most of the training programmes identified are seminars, symposiums or conferences. For instance, a Seminar on the Implementation of the Charter⁷⁴ in **Finland** aimed, among other objectives, to provide a comprehensive picture of the Charter's use at national level. It referred to FRA's Fundamental Rights Reports as a working tool. The President of the Supreme Court in **Austria** prepared a symposium – 'Charter of Fundamental Rights, consumer rights and reference for a preliminary ruling'⁷⁵ – to promote recommendations for the correct drafting of references for preliminary rulings. In **Lithuania**, a conference on the 'Application of EU Charter as a Standard of Individual Rights' Defense at Supra- and National Levels' took place at the Presidential Palace of the Republic. The conference was attended by scholars as well as by judges, representatives from the Bar Association, and other related institutions.⁷⁶

About two thirds of the identified training events targeted legal practitioners. For example, 'The Charter of Fundamental Rights of the European Union in Practice'⁷⁷ was a two-day training seminar for legal professionals organised in **Germany**, and a conference entitled 'Lawyers in dialogue with the Court of Justice of the European Union'⁷⁸ took place in **Luxembourg**. Some training is offered regularly – such as the monthly courses on EU and fundamental rights law provided by the Paris Bar in **France**.⁷⁹

Teachers, academics, researchers and students also have a role in raising awareness of, and familiarity with, the Charter's provisions. Of the training programmes identified in 2016, 13 % addressed this audience. For example, **Portugal** organised a 'Research seminar on fundamental rights'⁸⁰ intended to foster PhD students' interest in engaging in an autonomous and informed reflection on the issue of fundamental rights protection in Europe.

Promising practice

Innovative forms of Charter training for practitioners

A possible avenue for strengthening knowledge of the Charter among legal practitioners is the official training programmes already in place for legal practitioners. According to the judicial training principles adopted in 2016 by the European Judicial Training Network (EJTN), training should be part of a legal practitioner's normal working life.

For instance, in the **Netherlands**, judges are required to take part in 30 hours of in-service training per year, or 90 hours in three years. Ten per cent of the training activities must be dedicated to European law. As a rule, the Dutch Training and Study Centre for the Judiciary (SSR) integrates European law into its regular course activities on substantive and procedural law. On certain topics, such as the ECHR, specific courses are provided.

In autumn 2016, the SSR contracted an external expert to develop a one-day face-to-face basic course on EU fundamental rights and an online practicum on the Charter's scope of application. This digital laboratory started in 2017 and combines the formal learning setting of a (digital) classroom with learning on the job. It includes an introductory video lecture and tailor-made guidelines that can be used for real cases. Easy access to the lab will be provided through SSR's digital learning platform and through a link on the digital knowledge platforms of the courts (Wiki Juridica) and the prosecution service. This will enable judges, prosecutors and their support staff to learn about the scope of the Charter when they need it to solve a case ('just in time'), while sitting at their desk at work or at home ('any place, anywhere') and targeted to their needs ('just enough').

For more information, see European Judicial Training Network (2016), 'Nine principles of judicial training'; Studiecentrum Rechtspleging, Dutch Training and Study Centre for the Judiciary

FRA opinions

According to the case law of the Court of Justice of the European Union (CJEU), the EU Charter of Fundamental Rights is binding on EU Member States when acting within the scope of EU law. The EU legislature affects, directly or indirectly, the lives of people living in the EU. EU law is relevant in the majority of policy areas. In light of this, the EU Charter of Fundamental Rights should form a relevant standard when judges or civil servants in the Member States deliver on their day-to-day tasks. FRA's evidence suggests, however, that judiciaries and administrations make only rather limited use of the Charter at national level. More awareness could contribute to increased and more consistent application of the Charter at national level.

FRA opinion 1.1

The EU and its Member States should encourage greater information exchange on experiences and approaches between judges and administrations within the Member States but also across national borders. In encouraging this information exchange, Member States should make best use of existing funding opportunities, such as those under the Justice programme.

According to Article 51 (field of application) of the EU Charter of Fundamental Rights, all national legislation implementing EU law has to conform to the Charter. As in past years, the Charter's role in legislative processes at national level remained limited in 2016: the Charter is not a standard that is explicitly and regularly applied during procedures scrutinising the legality or assessing the impact of upcoming legislation – whereas national human rights instruments are systematically included in such procedures. Moreover, just as in past years, many decisions by national courts that used the Charter did so without articulating a reasoned argument about why the Charter applied in the specific circumstances of the case.

FRA opinion 1.2

National courts, as well as governments and/or parliaments, could consider a more consistent 'Article 51 (field of application) screening' to assess at an early stage whether a judicial case or legislative file raises questions under the EU Charter of Fundamental Rights. The development of standardised handbooks on practical steps to check the Charter's applicability – so far the case only in very few Member States – could provide legal practitioners with a tool to assess the Charter's relevance in a particular case or legislative proposal.

Under Article 51 of the EU Charter of Fundamental Rights, EU Member States are obliged to respect and observe the principles and rights laid down in the Charter, while they are also required to actively "promote" the application of these principles and rights. In light of this, more policies promoting the Charter and its rights at national level should be expected. Whereas such policies are rare, there appear to be increased efforts to provide human rights training to relevant professional groups.

FRA opinion 1.3

EU Member States should ensure that relevant legislative files and policies are checked for Charter compliance and increase efforts to ensure that Charter obligations are mainstreamed whenever states act within the scope of EU law. This could include dedicated policymaking to promote awareness of the Charter rights and targeted training modules in the relevant curricula for national judges and other legal practitioners. As FRA has stressed in previous years, it is advisable for the Member States to embed training on the Charter in the wider human rights framework, including the European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights (ECtHR).

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