



# THE EU CHARTER OF FUNDAMENTAL RIGHTS

## in Croatia

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 Croatian 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 Croatia?

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 Croatia include:

### ★ National courts: general reference to the EU Charter

In 2014, a court (Case VSRH Kž eun5/2014-4) held that, although the national law on judicial cooperation in criminal matters did not provide the victim of a crime a right to appeal against a negative decision concerning the execution of a European arrest warrant, this legislation should be interpreted broadly in light of human rights standards, including the EU Charter.

### ★ National legislation: general reference to the EU Charter

*“When monitoring the electoral campaign and presenting the election activities, all media publishers are obliged to guarantee journalistic independence, professionalism and expertise, consistent compliance with the journalistic code and especially the fundamental principle of freedom of expression that is provided by the provisions of the Croatian Constitution, the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Union Charter of Fundamental Rights, guided by the interests of the public at the same time.”*

Croatia, **Act on Election of Representatives to the Croatian Parliament**, 2015

### ★ National case law: right not to be tried or punished twice in criminal proceedings for the same criminal offence (Article 50)

In 2017, the Supreme Court (Case II-8 Kr 3/17-4) dealt with a Finnish citizen who was arrested in Croatia pursuant to a Turkish international arrest warrant. The person had thrown a homemade Molotov cocktail at the Turkish Embassy in Helsinki, causing fire and material damage. A Finnish court had convicted the defendant of sabotage in 2009. The question arose of whether or not the Finnish final judgment could be considered equivalent to a domestic judgment in accordance with Croatian legislation. The court confirmed that the Dubrovnik County Court had correctly concluded that the term ‘domestic court’ in Article 35, Paragraph 1, point 5, of the Act on International Legal Assistance in Criminal Matters in this case covered not only the courts of the Republic of Croatia, but also those of other EU Member States. The provision has to be interpreted in light of Article 50 EU Charter, according to which no one shall be tried or punished twice for the same criminal offence.

## The Croatian constitution

### The Constitution of the Republic of Croatia

- ★ It was adopted on 22 December 1990.
- ★ It has 10 titles and 152 articles.
- ★ Title three – entitled *Protection of Human Rights and Fundamental Freedoms* – contains three chapters, namely: *Common Provisions; Personal and Political Rights and Freedoms; and Economic, Social and Cultural Rights*.

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

- ★ The constitution does not refer to the EU Charter of Fundamental Rights.
- ★ Title 8 of the constitution (Articles 143-146) - *The European Union* - includes several provisions that refer to EU primary law.
- ★ The **European Convention of Human Rights** is not explicitly referred to in the text of the constitution.

# 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

### Art.1-5 Dignity

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

### Art.6-19 Freedom

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

### Art.20-26 Equality

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

### Art.27-38 Solidarity

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

### Art.39-46 Citizen's rights

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

### Art.47-50 Justice

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

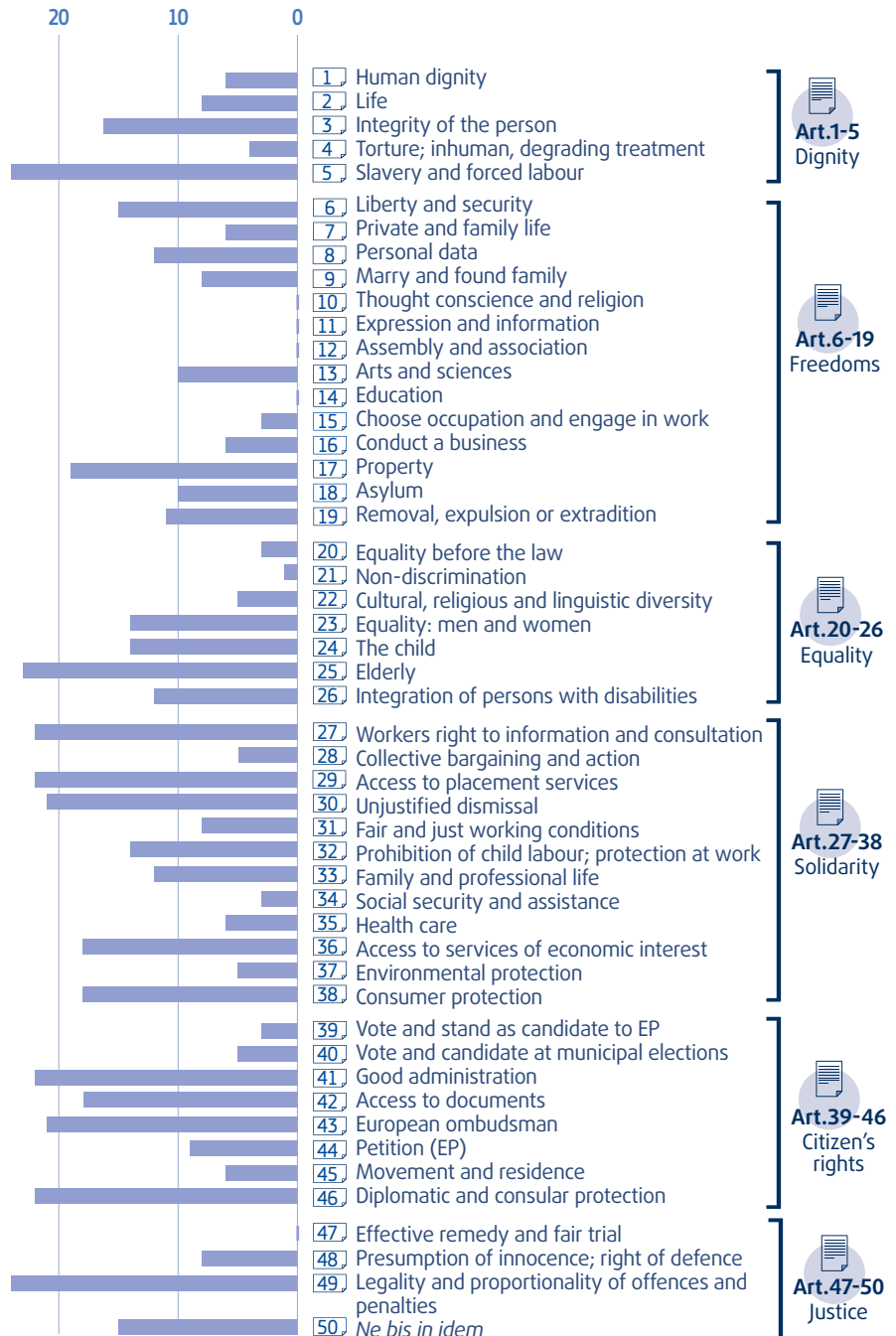
Given the breadth of rights explicitly covered by the Charter, it can help to increase the visibility of rights at national level. Moreover, national courts do sometimes use the Charter to interpret or further develop national law, even outside the scope of EU law.

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 Croatia, some Charter rights appear not to be fully mirrored in national constitutional

law – for instance, workers’ right to information and consultation within the undertaking (Article 27), right of access to placement services (Article 29), protection in the event of unjustified dismissal (Article 30), access to services of general economic interest (Article 36) and consumer protection (Article 38). 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**.

## FRA – EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Tel: +43 158030-0 – Fax: +43 158030-699

[fra.europa.eu](http://fra.europa.eu) – [info@fra.europa.eu](mailto:info@fra.europa.eu)

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ISBN 978-92-9474-150-9

DOI:10.2811/470445

TK-03-18-083-EN-N



Publications Office